SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 1236.

ALEXANDER M. KENADAY, APPELLANT,

vs.

SUSAN W. EDWARDS AND ALICE TYLER.

No. 1237.

JAMES B. GREEN, TRUSTEE, APPELLANT,

vs.

SUSAN W. EDWARDS AND ALICE TYLER.

APPEALS FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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a AUTHENTICATION OF RECORD.

Clerk's Certificate.

CLERK'S OFFICE, SUPREME COURT OF THE DISTRICT OF COLUMBIA.

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals together constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 6th day of September, 1889.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR.,
Assistant Clerk.

Justice's Certificate.

I, E. F. Bingham, chief justice of said court, do certify the foregoing attestation by R. J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal this 6th day of Sept., 1889.

E. F. BINGHAM, [SEAL.]
Chief Justice.

Clerk's Certificate to Justice's Official Character.

I, R. J. Meigs, clerk of said court, hereby certify that E. F. Bingham, whose genuine signature is subscribed to the foregoing certificate, was at the time of signing and attesting the same chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 6th day of Sept., 1889.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR.,
Assistant Clerk.

[Endorsed:] Authentication of record.

1 *Bill of Complaint. Filed Nov.* 2, 1881.

In the Supreme Court of the District of Columbia.

(Filed Nov. 2, 1881. R. J. Meigs.)

SUSAN W. EDWARDS *et al.*
vs.
CHAPMAN MAUPIN, Trustee. } In Equity. 7907.

Original bill.

To the honorable the justice of the supreme court of the District of Columbia, holding the equity court:

The bill of complaint of Susan W. Edwards, widow, and Alice Tyler, by her next friend, Susan W. Edwards, humbly showeth to your honor that by the last will and testament of a certain Mary E. Macpherson, of Baltimore city, a copy whereof is herewith filed, marked Complainant's Exhibit A, and which it is prayed may be taken as a part of this bill, a certain house and lot in the city of Washington are devised to Robert W. Maupin and Chapman Maupin in trust for the use and benefit in common of your oratrices; and your oratrices further show that the said Mary E. Macpherson died in the year eighteen hundred and seventy-three, and that her said last will and testament was duly admitted to probate on the twentieth day of September of that year, in the orphans' court of Baltimore

2 city; that the said Robert W. Maupin died in the month of October, eighteen hundred and seventy-six, leaving the said Chapman sole surviving trustee; and they further show that the rents and profits issuing out of and arising from the said real estate have been regularly collected, from time to time since the death of the said Mary E. Macpherson, by the said trustees or the survivor of them, but that no account has ever been rendered in any court of competent jurisdiction of the receipt of said rents and profits or their disbursement; and they further show that one of them, the said Alice Tyler, is an infant of tender years, who claims the protection of your honor as to the manner in which the said trustees or the survivor of them may discharge his or their duty; and your oratrices are informed and believe, and therefore aver, that the said surviving trustee, Chapman Maupin, desires and intends to resign his trust after accounting in due form to your honor for his past management. To the end, therefore, that the trust may not fail for want of a trustee, that a new trustee be appointed and an accounting for the said rents and profits be had from the said Chapman Maupin, surviving trustee, may it please your honor to issue the writ of subpœna to the said Chapman Maupin, trustee as aforesaid, commanding him to be and appear in this court on a certain day to be named therein, to show cause, if any he has or can show, why a decree should not be passed granting the relief prayed for, and that

your oratrices may have such other and further relief as the nature of their case may require.

JAMES B. GREEN,
Solicitor for Complainants.

3 EXHIBIT "A."

Mary E. Macpherson's Last Will and Testament.

In the name of God, amen. I, Mary E. Macpherson, widow, of Baltimore city and State of Maryland, being of sound and disposing understanding and memory, do make and publish this my last will and testament in manner and form following, namely:

After the payment of all my just debts and funeral expenses, I give, devise, and bequeath as follows—that is to say:

1. I give and bequeath to my daughter, Susan W. Edwards, my sewing-machine, work-stand, silver-plated coffee urn, marked U. S., two union chairs, three oil paintings (by my niece, Virginia Washington), my walnut tea-tray and what-not, and my miniature likeness of General Washington—all the said articles except the said miniature absolutely and as her separate property, free from the debts, power, and control of her present or any future husband, and from and after her death I give the said miniature to my nephew, Chapman Maupin.

2. Item. I give and bequeath to my granddaughter, Mary M. Tyler, my feather bed, bolster, and two pillows and my watch and chain as her separate property, free from the debts, power, and control of her present or any future husband.

3. Item. I give and bequeath to my granddaughter, Nannie Rawleigh, my gold thimble and the portrait of my deceased brother, Peter G. Washington, as her separate property, free from the debts, power, and control of her present or any future husband.

4. Item. I give and bequeath to my sister, Sally W. Maupin, my silk quilt, which I have had in use and which is bound around with pink riband.

5. Item. I give and bequeath to my great-granddaughter, Alice Tyler, all my pictures of every description which are not
4 before named and disposed of; also my photograph album and all my books, my new silk quilt and all my silk pieces; also all my clothes, except such articles as in the judgment of my daughter Susan are not suitable for her and are proper to be given to the poor; and such gift to the poor I wish made by the hands and according to the uncontrolled discretion of my said daughter, Susan; and I also give to the said Alice Tyler all my silver, consisting of five tablespoons, six teaspoons, and a cream ladle, all marked "M;" also five small teaspoons, marked L. W.; also give to the said Alice Tyler my set of bed-room furniture, consisting of a walnut bedstead, a dressing bureau, a washstand, four chairs, and a towel rack; also all my small articles not herein named, such as vases, jewelry, and other articles.

6. Item. I give, devise, and bequeath unto my nephews, Chap-

man Maupin and Robert W. Maupin, of the State of Virginia, in fee simple, my lot, with the house and other improvements situated thereon, on F street, between Fifth and Sixth streets, number five hundred and eleven, in the city of Washington and District of Columbia, to be held by them and the survivor of them, and by such person or persons as may be appointed to execute the trusts declared by this my will, by the last will and testament of such survivor, or by other instrument or writing executed for that purpose by such survivor; but in trust, nevertheless, to manage and control the same and to take the rents, profits, and income thence arising, and to pay the one-half of the net amount received from such rents, profits, and income monthly, quarterly, half-yearly, or yearly, according to the discretion of my said trustees, to my daughter, Susan W. Edwards, wife of John S. Edwards, for and during her natural life, to her own sole and separate use, free from the control of her present or any future husband and from responsibility for his debts or engagements, it being my design that the income thus provided for my said daughter shall not be assigned, disposed of, or pledged in advance or by way of anticipation, but shall be employed to supply her current wants.

7. Item. From and immediately after the death of my said daughter Susan I desire that my said trustees shall hold the said property in trust to pay the said moiety of such net rents, profits, and income, monthly, quarterly, half-yearly, or yearly, as in the discretion and judgment of my said trustees shall seem best, to the sole and separate use of my granddaughter, Susan W. Edwards, free from the control of any husband whom she may take and from responsibility for any of his debts or engagements; the said one-half of the net income, rents, and profits of the said real estate hereinbefore devised to my said trustees to be invested and accumulated under the direction and control of my said trustees, according to their best judgment, for the benefit of my said granddaughter, Susan W. Edwards, during the period of her minority or nonage, and, as soon as she shall attain the age of twenty-one years, as well the net income arising from the said accumulations as the one-half aforesaid of the said income, rents, and profits of the said real estate is to be paid to my said granddaughter, Susan W. Edwards, herself, either monthly, quarterly, half-yearly, or yearly, as in the judgment and discretion of my said trustees may seem best, for and during the natural life of my said granddaughter; and I direct that from and after the death of my said granddaughter, Susan W. Edwards, my said trustees shall forthwith distribute the whole of the said moiety of the said real estate and of the accumulations aforesaid amongst her children and the descendants of any children who may survive her, per stirpes; but in case she should die without children or descendants living at her death, then and in that case the same to my great-granddaughter, Alice Tyler, subject to the terms and conditions annexed to the provision hereinafter made for the said Alice.

8. Item. As to the remaining moiety of the net rents, profits, and income arising from the said real estate herein-

before devised to my said trustees, I direct that they shall collect and receive the same, and that they shall pay the same monthly, quarterly, half-yearly, or yearly, in their judgment and discretion, to the sole and separate use of my great-granddaughter, Alice Tyler, for and during her natural life, free from the debts, engagements, or control of any husband she may take, and I expressly declare my will to be that the same shall under no circumstances be subject to the debts, engagements, control, or disposal of her father, Henry B. Tyler; and I direct that during the minority of the said Alice the said moiety of the net income, rents, and profits of the real estate aforesaid shall be invested and accumulated, according to the best judgment of my said trustees, for the benefit of the said Alice; but my said trustees may, in their discretion, out of such net income, instead of investing and accumulating it, defray all or a part of the expenses of educating the said Alice, provided they shall approve of the school or teacher, and provided, also, that in no case shall the teacher be a member of the Roman Catholic Church, so called, nor the school be conducted under the direction, auspices, or control of members of that church; and as soon as the said Alice shall attain the age of twenty-one years my said trustees shall pay as well the net income arising from the accumulation aforesaid for her benefit during her infancy as the said one-half of the net income, rents, and profits of the said real estate to the said Alice herself, either monthly, quarterly, half-yearly, or yearly, according to the discretion of my said trustees, but always, as aforesaid, free from the debts, engagements, or control of any husband she may take during the natural life of the said Alice; and I do hereby authorize and empower the said Alice, by a writing in the nature of a last will, executed as a will of lands is required by the laws of Maryland to be executed, to appoint the said moiety of the real estate aforesaid and the accumulations aforesaid to and amongst her children and the descendants of her children who may survive
7 her in such proportions and shares as she may think fit; and in case the said Alice should make no such appointment I direct that immediately upon her decease my said trustees shall distribute the said moiety of the real estate aforesaid and the accumulations aforesaid amongst the said Alice's children and descendants of any children who shall survive her, to take per stirpes and in fee simple; but in case she shall die without children or descendants living at her death, then the same to go to her mother, my granddaughter, Mary M. Tyler, and my said trustees are directed to receive the net income, rents, and profits of the said moiety of the real estate aforesaid and of the accumulations aforesaid, hereinbefore given to the said Alice, and to pay the same monthly, quarterly, half-yearly, or yearly, as my said trustees shall in their discretion deem best, into the hands of the said Mary M. Tyler, for and during her natural life, free from the debts, engagements, or control of her present or any future husband, it being my design in this case, as in the case of my daughter, Susan W. Edwards, that the income thus provided for the said Mary M. Tyler should not be disposed of, assigned, or pledged in advance or by way of anticipa-

tion, but should be employed to supply her current wants; and in case the said Alice, my great-granddaughter, should die without children or descendants living at her death, having survived her said mother, or if her mother should survive her, upon her said mother's death the said moiety of the real estate aforesaid and the said accumulations, the income whereof has hereinbefore been given to the said Alice, shall by my said trustees be distributed to and amongst the next of kin of the said Alice other than and excepting her father, the said Henry B. Tyler.

9. Item. I give, devise, and bequeath all my other property whereof I may die seized, possessed, or entitled, of whatsoever kind, real, personal or mixed, and especially that which I may derive from
8 the estate of my brother, the late Peter G. Washington, unto the said Chapman Maupin and Robert W. Maupin and the survivor of them, and such person or persons as may be appointed to execute the trusts of this my will, by the last will and testament of such survivor or by other instrument of writing executed for that purpose by such survivor, in trust, to hold the same for the purposes and upon the trusts hereinbefore declared in the sixth, seventh, and eighth clauses of this my will in respect to the real estate and the accumulations therein named; and I do hereby confer upon my said trustees full power and authority, at his or their discretion, from time to time to sell by public or private sale and to convey to the purchaser or purchasers all or any part of the trust property in this will devised and bequeathed to my said trustees, and to receive, grant acquittance for, and reinvest the proceeds of such sales, and I do expressly relieve purchasers of such property from the obligation to see to the application of the purchase-money.

10. Item. I constitute and appoint my said nephews, Chapman Maupin and Robert W. Maupin, to be the executor of this my last will and testament, and I make it my request that they shall not be required to give security, either as executors or as trustees of this my will, and I do hereby revoke and annul all wills by me heretofore made.

In witness whereof I have hereunto set my hand and seal this third day of June, in the year eighteen hundred and seventy-two, at the city of Baltimore.

MARY E. MACPHERSON. [SEAL.]

Signed, sealed, published, and declared as and for her last will and testament by Mary E. Macpherson, the above-named testatrix, in the presence of us, who, at her request, in her presence, and in the presence of each other, have hereunto subscribed our names as witnesses thereto.

BENJ. F. BROWN.
ELIZABETH BROWN.
E. L. QUINAN.

9 BALTIMORE CITY, *ss*:

On the 18th day of September, 1873, came Benjamin F. Brown, Elizabeth Brown, and E. L. Quinan, the three subscribing witnesses

to the aforegoing last will and testament of Mary E. Macpherson, late of said city, deceased, and made oath on the Holy Evangely of Almighty God that they did see the testatrix sign and seal this will; that they heard her publish, pronounce, and declare the same to be her last will and testament; that at the time of her so doing she was, to the best of their apprehension, of sound and disposing mind, memory, and understanding, and that they subscribed their names as witnesses to this will in her presence, at her request, and in the presence of each other.

Sworn to in open court.

Test: J. HARMON BROWN,
Register of Wills for Baltimore City.

This is a codicil to my last will:

I give to my daughter, Susan W. Edwards, my miniature likeness of Gen. Washington, to hold during her lifetime, and at her death I wish it to be given to my great-granddaughter, Alice Tyler. I wish my nephew, Chapman Maupin, to take possession of the miniature at the death of my daughter Susan, and hold it in trust for Alice Tyler during her minority. It is also my wish that her father, Henry B. Tyler, Junior, and her mother, Mary M. Tyler, have nothing to do with that or anything else that I leave to Alice Tyler. I do not wish it sold out of the family under any circumstances. If Alice Tyler dies without issue, I wish the miniature to go to my granddaughter, Nannie Raleigh, and at her death to Joseph Macpherson Edwards, my grandson; at his death to Susan W. Edwards, my granddaughter, and at her death to my grandson, Maupin Edwards, children of my daughter, Susan W. Edwards. We have witnessed this codicil in the presence of the testator and at her request, September 9th, 1873.

MARY E. MACPHERSON.
SALLY W. MAUPIN.
SUSAN G. MAUPIN.
JANE N. MAUPIN.

BALTIMORE CITY, *ss:*

On the 18th day of September, 1873, came Chapman Maupin and made oath on the Holy Evangely of Almighty God that he doth not know of any will or codicil of Mary E. Macpherson, late of said city, deceased, other than the above instrument of writing, except of anterior date, and that he received the same from the testatrix at the time of their execution and has had possession of them since; that the testatrix departed this life on the 12th day of September, 1873.

Sworn to before the subscriber.

J. HARMAN BROWN,
Register of Wills for Baltimore City.

BALTIMORE CITY, *ss:*

On the 20th day of September, 1873, came Sally W. Maupin, Susan G. Maupin, and Jane N. Maupin, the three subscribing witnesses to the aforegoing last will and testament of Mary E. Macpherson, late

of said city, deceased, and made oath on the Holy Evangely of Almighty God that they did see the testatrix sign and seal this codicil; that they heard her publish, pronounce, and declare the same to be a codicil to her last will and testament; that at the time of her so doing she was, to the best of their apprehension, of sound and disposing mind, memory, and understanding, and that they subscribed their names as witnesses to this codicil in her presence, at her request, and in the presence of each other.

Sworn to before the subscriber.

J. HARMAN BROWN,
Register of Wills for Baltimore City.

11 In Baltimore City Orphans' Court.

The court, after having carefully examined the above last will and testament of Mary E. Macpherson, late of Baltimore city, deceased, together with the codicil thereunto attached, and also the evidence adduced as to its validity, orders and decrees, this twentieth day of September, 1873, that the same be admitted in this court as the true and genuine last will and testament and codicil of the said Mary E. Macpherson, deceased.

BOLIVAR D. DANELS.
GEO. W. BISHOP.
G. W. LINDSAY.

In testimony that the aforegoing is a true copy taken from Wills' Liber I. H. B. No. 39, folio 440, &c., being one of the records in the office of the register of wills for Baltimore city, I hereunto subscribe my name and affix the seal of my office this 31st day of October, 1881.

Test:

[SEAL.] ROBERT T. BANKS,
Register of Wills for Baltimore City.

MARYLAND, *sct:*

I, Neilson Poe, presiding judge of the orphans' court for Baltimore city, in the State aforesaid, do certify that the aforegoing attestation of Robert T. Banks, register of wills for said city, is in due form and by the proper officer.

Given *from* under my hand, at the city of Baltimore, this thirty-first day of October, in the year of our Lord one thousand eight hundred and eighty-one.

NEILSON POE.

12 STATE OF MARYLAND, } *sct:*
Baltimore City, }

I hereby certify that the Honorable Neilson Poe, by whom the above certificate was given and who hath thereto subscribed his name, was at the time of so doing chief judge of the orphans' court for Baltimore city, duly elected, commissioned, and qualified.

In testimony whereof I hereunto subscribe my name and affix

the seal of the said court this thirty-first day of October, in the year of our Lord one thousand eight hundred and eighty-one.

Test:

[SEAL.] ROBERT T. BANKS,
Register of Wills for Baltimore City.

Answer of Defendant. Filed Nov. 2, 1881.

In the Supreme Court of the District of Columbia. In Equity.

(Filed November 2, 1881. R. J. Meigs, clerk.)

SUSAN W. EDWARDS *et al.*
vs.
CHAPMAN MAUPIN, Trustee.

Answer of defendant, Chapman Maupin.

To the honorable the judge of the supreme court of the District of Columbia, holding the equity court:

The answer of Chapman Maupin, trustee, to the bill of complaint of Susan W. Edwards and Alice Tyler, by her next friend, Susan W. Edwards, in this court exhibited, answering, says that your respondent is willing and ready to account to your honorable court, on or before a day fixed by your decree, for all property and money coming into his hands or those of his co-trustee, or both, wherein the complainants may have any interest under the last will
13 and testament of Mary E. Macpherson, deceased, in pursuance of the trust vested in him or them thereby; and your respondent admits the averments of the said bill of complaint touching the infancy of the said Alice Tyler and her interest in common with the said Susan W. Edwards in and to certain real estate in Washington city by virtue of the said last will and testament; and he further admits that Robert W. Maupin, one of the trustees named in the said will, died as alleged, and that he, the surviving trustee, desires and intends to resign his trust, with the leave of your honorable court, and he therefore consents to the passage of a decree as prayed in the said bill of complaint.

C. G. LEE,
Att'y for Chapman Maupin.

14 *Depositions of Jas. B. Green and Chapman Maupin, Behalf Complainants. Filed Nov.* 10, 1881.

In the Supreme Court of the District of Columbia.

SUSAN W. EDWARDS *et al.*
vs.
CHAPMAN MAUPIN. } Equity, 7907, Doc. 21.

Be it remembered that at an examination of witnesses begun and held on the 2d day of November, A. D. 1881, and, by adjournment,

on the 5th day of November, A. D. 1881, personally appeared before me, an examiner in chancery of this court, the within-named deponents, James B. Green and Chapman Maupin, who, being produced as witnesses for and — behalf of the complainants in the above-entitled cause and being cautioned and sworn to tell the truth, the whole truth, and nothing but the truth, depose and say as follows:

In the Supreme Court of the District of Columbia.

SUSAN W. EDWARDS *et al.*
vs.
CHAPMAN MAUPIN. } Equity, No. 7907, Doc. 21.

Met pursuant to agreement.

Present: Counsel for respective parties.

15 JAMES B. GREEN, produced as a witness on behalf of complainant-, of lawful age, and duly sworn, deposes and says:

My name is James B. Green; occupation, attorney-at-law; residence, city of Baltimore, Maryland. I know the parties to this suit and that Susan W. Edwards and Alice Tyler are the parties designated by the will of Mary E. Macpherson, late of Baltimore, deceased, to take certain real estate in the city of Washington, in equal parts, subject to certain limitations and qualifications mentioned in the will. I know the property referred to in the bill of complaint constitutes the real estate referred to by the will. It is a dwelling-house and lot known as No. 511 F street northwest. I am acquainted with the trustee, Chapman Maupin, and have been assured by him of his readiness to account in the court of equity for the management of the trust and of his wish to withdraw from the same after his accounts shall be properly scrutinized.

Alice Tyler, one of the complainants, is about nineteen years of age, and she, with her co-complainant, desires the appointment of a new trustee upon the withdrawal of Maupin, and they have expressed a wish that I should succeed him in the trust.

16 The property, in my judgment, is worth about from four thousand to forty-five hundred dollars. The improvements are a frame dwelling-house, and the lot is the most valuable part of the property.

I know Susan W. Edwards to be a widow, her husband having died some three or four years before the filing of the bill.

JAMES B. GREEN.

Subscribed and sworn to before me this 2nd day of November, 1881.

ALBERT HARPER,
Examiner in Chancery.

Adjourned until Saturday, November 5th, 1881, at twelve o'clock m.

SATURDAY, *November 5th*, 1881—12 o'clock m.

Met pursuant to adjournment.

Present: Counsel for respective parties.

CHAPMAN MAUPIN, produced as a witness on behalf of complainant-, of lawful age, and duly sworn, deposes and says:

My name is Chapman Maupin; residence, fifty-one West Monument street, Baltimore city, Maryland; occupation, teacher.

17 I am the defendant in this suit. I know the complainants in this suit. Their names are Mrs. Susan W. Edwards and Alice Tyler. Thev are the beneficiaries under the trust created by the will of Mary E. Macpherson, deceased, of Baltimore, Maryland. I have had charge, as trustee, of the property mentioned in the will. The property is situated in the city of Washington, D. C., in square numbered four hundred and eighty-seven (487), I think, lot numbered two (2), known as 511 F street northwest. It is improved by a frame dwelling-house, which contains about eight rooms, I think, with a smaller house attached. It rents now for twenty-seven dollars and a half per month. It is valued at about five thousand dollars; I think the ground and house could be sold for that. That is all the property situated in this city that is in my hands as trustee.

The parties above mentioned as beneficiaries under the trust are the parties to this suit, and one of them, Alice Tyler, is a minor, I think, about nineteen or twenty years of age.

18 Mrs. Susan W. Edwards, the other party, is a widow and has been for about three years, I think.

CHAPMAN MAUPIN.

Subscribed and sworn to before me this 5th day of November, 1881.

ALBERT HARPER,
Examiner in Chancery.

Whole testimony in this case is here closed.

ALBERT HARPER,
Examiner in Chancery.

I certify that the foregoing depositions (containing six manuscript pages) were written down by me from the statements as uttered by the deponents thereof, and that each deposition was afterward read over and subscribed and sworn to by the respective deponent in my presence.

I further certify that my fee of ten dollars has been paid by the complainants.

I further certify that I am not of counsel nor in anywise interested in this suit.

ALBERT HARPER,
Examiner in Chancery.

19 *Order of Reference to Auditor. Filed Nov.* 23, 1881.

In the Supreme Court of the District of Columbia.

SUSAN W. EDWARDS *et al.*
vs.
CHAPMAN MAUPIN. } Doc. 21, No. 7907.

This cause coming on to be heard, and it appearing to the court that the defendant, Chapman Maupin, has filed his account as trustee, as ordered by this court, it is, this 23d day of November, 1881, ordered that this cause be, and it is hereby, referred to the auditor to state the account of said trustee.

By the court: A. WYLIE.

20 *Order Allowing Exceptions to Auditor's Report. Filed Feb.* 14, 1882.

In the Supreme Court of the District of Columbia.

SUSAN W. EDWARDS *et al.*
vs.
CHAPMAN MAUPIN. } In Equity. No. 7907, Docket 21.

Upon the hearing of the exceptions in the above-entitled cause to the ratification and confirmation of the auditor's account therein stated it is ordered, this 14th day of February, eighteen hundred and eighty-two, that the account be remanded to the auditor with instructions to restate the same in the manner following: First, he shall charge against the principal of the trust estate the permanent and substantial improvements made in and about the dwelling number five hundred and eleven (No. 511) F street, to wit, special improvement taxes, amount expended in constructing sewer, amount expended in rebuilding wall, new fencing, painting, and so forth; second, he shall eliminate from the account all amounts charged against Susan W. Edwards and Alice Tyler in excess of their respective shares of the income derived from the property; third, he shall allow the trustee a commission of ten per cent. on his collec-
21 tions; fourth, interest shall be charged against the trustee on sums collected from the executors of Peter G. Washington from the date of said collection, deducting from the principal, however, before computing interest the amounts expended for permanent improvements, and, fifth, the accounts of the trustee are to be audited to date.

A. B. HAGNER,
Asso. Justice.

22 *Second Report of Auditor, &c. Filed Mar.* 24, 1882.

In the Supreme Court of the District of Columbia.

SUSAN W. EDWARDS *et al.*
vs.
CHAPMAN MAUPIN. } No. 7907, Equity Docket 21.

2nd report of auditor.

This cause is remanded to the auditor with instructions to restate the account in the manner prescribed by the order of the 14th of February, 1882.

The execution of this reference will be found in the schedules attached to this report.

In Schedule C I have restated the account of the said trustee, charging him with the receipt of rents and other collections in the form of revenue or income from the trust property, including the amount charged as interest upon a principal trust fund received from the executors of Peter G. Washington, an account of which is stated in Schedule E.

The trustee exhibited to the auditor in this reference an exemplified copy of the account of the said executors as settled in the orphans' court of Baltimore, Md., showing that the said executors
was therein charged with interest upon the said principal
23 fund in his hand to the 12th of October, 1881, amounting to $249.58. Against this I have allowed a rebate of interest upon the expenditures made by the trustee and which, under the order of reference, are now charged against the principal of the trust estate, as shown in the said Schedule E. The balance of the said interest is, in Schedule C, charged to the said trustee as revenue of the said trust fund.

I have credited in this account, in Schedule C, the expenditures made by said trustee for taxes, insurance, water rent, and other current expenses and such repairs as do not come under the head of permanent or substantial improvements, as specified in the order of re-reference. I have also allowed the trustee commissions upon the whole of his collections and receipts of revenue, as directed in the order of re-reference.

The balance, as shown by this account, is carried to Schedule D and divided into two shares, under the directions of the will of the said Mary E. MacPherson.

The trustee has filed with the auditor receipts of the distributees showing the payment to them severally of the amount to which they
are entitled under this distribution. It is proper for me to
24 say here that the said trustee has filed receipts for other and additional payments to these distributees, for which I have given him no credit.

In Schedule E I have stated an account of the amount received by the trustee from the executors of Peter G. Washington, charging the trustee with the said amount and crediting him with the expend-

itures made for permanent and substantial improvements, assessments for special improvements, construction of fences, painting, &c., as directed by the order of re-reference. I have in this schedule calculated interest on these expenditures to the 12th of October, 1881, the date to which interest is calculated on the principal fund received from the executors of Peter G. Washington, and carried it to Schedule C, as before stated.

JAS. G. PAYNE, *Auditor.*

March 3, 1882.

25 SCHEDULE C.

Account of Chapman Maupin, Trustee, Restated by Direction of the Court.

DR.

1874.			
Nov. 1.	To rents collected to this date		487 91
1875.			
Nov. 1.	" " " " "	485 88	
	From sale of curbing	6 60	
			492 48
1876.			
Nov. 1.	To rents collected to this date		442 80
1877.			
Nov. 1.	" do. do.		266 40
1878.			
Nov. 1.	" do. do.		37 50
1879.			
Nov. 1.	" do. do.		269 60
1880.			
Nov. 1.	" do. do.	304 56	
	" dividend from Mutual Fire Insurance Co.	44 56	
			349 12
1881.			
Nov. 1.	" rents collected to this date		276 84
1882.			
Feb. 1.	" do. do.		74 25

26 *Schedule C—(Continued).*

To amount received from executors of Peter G. Washington as interest to Oct. 12, 1881	249 58	
Less interest on expenditures. as per Schedule E	154 13	
		95 45
Total receipts		$2,792 35

CR.

1874.	By repairs to gates and fence included in vou. A to Schedule E		5 00	
	Insurance,	vou. 1	3 84	
	Water rent,	" 2	7 00	
	Repairs,	" 3	8 45	
1875.	Taxes,	" 4	97 02	
	Insurance,	" 5	3 84	
	Water rent,	" 6	7 00	
	Amounts carried forward		132 15	$2,792 35

27 *Schedule C—(Continued).*

Debits brought forward		$2,792 35
Credits " "	$132 15	

CR.

	By taxes (without penalty),	vou. 7	139 53	
1876.	Insurance,	" 8	3 84	
	Water rent,	" 9	7 00	
	Taxes (without penalty),	" 10	69 77	
	Repairs,	" 11	5 50	
	"	" 12	5 25	
	"	" 13	4 00	
1877.	Insurance,	" 14	3 84	
	Taxes (without penalty),	" 15	34 89	
	Water rent,	" 16	7 00	
	Repairs,	" 17	3 00	
	"	" 18	12 00	
	Taxes (without penalty),	" 19	34 88	
	Repairs,	" 20	4 75	
	"	" 21	9 00	
	"	" 22	3 00	
	"	" 23	5 75	
	"	" 24	8 00	
	"	" 25	3 00	
1878.	Taxes (without penalty),	" 26	69 77	
	Insurance,	" 27	3 84	
	Repairs,	" 28	5 00	
	"	" 29	30 00	

28 *Schedule C—(Continued).*

Referee's fees,	vou. 30	2 50	
W. W. Cox's bill,	" 31	5 00	
Costs,	" 32	3 25	
"	" 33	2 30	
Solicitor's fees,	" 34	25 00	

1879.	Taxes (without penalty),	vou. 35	55 22	
	Repairs,	" 36	14 10	
	Insurance,	" 37	3 84	
	W. W. Cox's bill,	" 38	18 30	
	Repairs,	" 39	12 00	
	"	" 40	4 00	
	"	" 41	5 50	
	"	" 42	3 50	
1880.	"	" 43	30 00	
	Insurance,	" 44	3 84	
	Costs,	" 45	5 00	
1881.	Taxes (without penalty),	" 46	55 22	
	" " "	" 47	55 22	
	Insurance,	" 48	2 88	
	Trustee's commissions		92 55	
	Auditor's fee, first account		25 00	
	Balance for distribution		1,763 37	
	Total			$2,792 35

JAS. G. PAYNE, *Auditor.*

29 SCHEDULE D.

Balance of rents and collections from Schedule C	1,763 37	
Add rent collected to March 1, 1882	26 13	
Total		$1,789 50
To Susan W. Edwards, one half	894 75	
Alice Tyler, one half	894 75	
Totals	$1,789 50	$1,789 50

JAS. G. PAYNE, *Auditor.*

30 SCHEDULE E.

Account of Chapman Maupin, Trustee, of the Principal Fund.

DR.

To amount received from the executors of Peter G. Washington, as of Oct. 12, 1881 ..... $818 45

CR.

1873.
Nov. 5. By expenditure for painting house, vou. *a* 25 00
Int. to Oct. 12, 1881, 11.90.

1875.
June 9. Special assessment, vou. *b* 46 13
Int. to Oct. 12, 1881, 17.55.

1876.			
June 30.	Sewer, closet, and sink, vou. *c*----	154 50	
	Int. to Oct. 12, 1881, 48.98.		
1877.			
May 4.	Painting, vou. *d*----	27 00	
	Int. to Oct. 12, 1881, 7.20.		
" 7.	Fence and gate, vou. *e*----	15 00	
	Int. to Oct. 12, 1881, 3.99.		
" 11.	Fence and door, vou. *f*----	20 00	
	Int. to Oct. 12, 1881, 5.30.		
July 25.	Underpinning porch and fence, vou. *g*-	73 39	
	Int. to Oct. 12, 1881, 18.56.		

31 *Schedule E—(Continued).*

July 23.	Special assessment, vou. *h*----	86 18	
	Int. to Oct. 12, 1881, 21.82.		
Oct. 4.	Painting, vou. *i*----	45 00	
	Int. to Oct. 12, 1881, 10.86.		
" 10.	Papering, vou. *k*----	33 15	
	Int. to Oct. 12, 1881, 7.97.		
1881.			
Oct. 21.	Special assessment, vou. *l*----	20 61	
	Total expenditures----		545 97
	Interest carried to Schedule C.		
	Balance in hands of trustee----		272 48
	Int. from Oct. 12, 1881, to March 1, 1882--		6 22
			278 70
	Less auditor's fee, this account----		15 00
	Balance (forward)----		$263 70

32 *Schedule E—(Continued).*

Amount brought forward----	$263 70
Additional sum received from the executors of Peter G. Washington----	267 00
Total----	$530 70

JAS. G. PAYNE, *Auditor.*

33 SATURDAY, *Feb.* 18, 1882.

Hearing pursuant to notice.

Present: Mr. C. G. Lee, for the defendant, Mr. Maupin.

Chapman Maupin sworn and examined by Mr. Lee.

Chapman Maupin, trustee, exhibits to the auditor the account of Chapman Maupin, surviving executor of the last will and testament of Mary E. McPherson, deceased, or an exemplified copy of the said

account, showing that the said executor is therein charged with interest at 6 per cent. per annum on balance remaining in his hands from time to time, said interest amounting to $249.58. The said account appears to be settled to the 12th day of October, 1881.

The said trustee claims that under the order of re-reference he is entitled to interest upon the expenditures made by him for permanent or substantial improvements and for special assessments, the same being directed to be taken from the said principal fund received by the said trustee from the executor before he shall be charged with interest on said principal fund, and the said expenditures having been actually made by advancements from the said principal fund.

The trustee further states that advancements or overpayments to the distributees were made from time to time with the knowledge on the part of the distributees that they were overpayments.

34 *Agreement and Order Ratifying Auditor's Report, Mar.* 29, 1882.

In the Supreme Court of the District of Columbia.

SUSAN W. EDWARDS *et al.*
vs.
CHAPMAM MAUPIN. } No. 7907, Docket 21.

The auditor's account in the above-entitled cause having been restated under the directions of the court and duly returned, it is hereby agreed that immediate ratification thereof shall be had and an order to that end passed by the court.

JAMES B. GREEN,
Solicitor for Complainants.
C. G. LEE,
Sol. for Defendant.

In the Supreme Court of the District of Columbia.

SUSAN W. EDWARDS *et al.*
vs.
CHAPMAN MAUPIN. } No. 7907, Docket 21.

The agreement of counsel in this cause being considered by the court, it is thereupon, this 29th day of March, eighteen hundred and eighty-two, ordered that the auditor's account restated therein be, and the same is hereby, ratified and confirmed.

By order of the court: D. K. CARTTER, *Ch'f Just.*

35 *Agreement to Submit Cause. Filed Mar.* 29, 1882.

In the Supreme Court of the District of Columbia.

SUSAN W. EDWARDS *et al.*
vs.
CHAPMAN MAUPIN, Trustee.

It is hereby agreed, this 29th day of March, eighteen hundred and

eighty-two, that the above-entitled cause be submitted for a decree.

JAMES B. GREEN,
Solicitor for Complainants.

C. G. LEE,
Sol. for Defendant.

36 *Decree Substituting Trustee. Filed Mar.* 29, 1882.

In the Supreme Court of the District of Columbia.

(Filed March 29, 1882. R. J. Meigs, clerk.)

SUSAN W. EDWARDS *et al.*
vs.
CHAPMAN MAUPIN. } In Equity. No. 7907, Docket 21.

Decree substituting trustee.

The above cause standing ready for hearing, and being submitted, the bill, answer, and all the other proceedings were by the court read and considered. It is thereupon, this 29th day of March, eighteen hundred and eighty-two, by the supreme court of the District of Columbia, sitting as a court of equity, adjudged, ordered, and decreed that the fee-simple estate in lands located in the city of Washington, District of Columbia, devised by the last will and testament of Mary E. Macpherson, deceased, to
37 Chapman Maupin and Robert W. Maupin, upon certain trusts declared in said will, be, and the same is hereby, taken out of the said Chapman Maupin, the survivor of the said co-trustees, and vested in James B. Green, of the city of Baltimore, together with all the rights, powers, duties, and obligations incident thereto under the said last will and testament; and it is further adjudged, ordered, and decreed that all the trusts vested by the said will in the said co-trustees and surviving to the said Chapman Maupin be, and they are hereby, abrogated and repealed as to him and conferred upon the said James B. Green, subject to the terms of the said last will and testament, and that the retiring trustee pay over and deliver to his successor hereby appointed all money, books, papers, and other property belonging or relating to the said trust estate.

And it is further adjudged, ordered, and decreed that the said James B. Green, trustee, as herein provided, shall file with this court before any sale of the said real estate under the powers contained in the said will a bond in the sum of eight thousand dollars, with a surety or sureties, to be approved by this court, for the faithful performance of his duty in connection with the said sale, and that he shall at all times be subject to the control and order of this court in matters touching the trust, and that the costs of this proceeding are payable out of the principal of the trust estate.

And it is further ordered that the defendant, Chapman Maupin, have leave to withdraw his vouchers from the files of this court.

By order or the court : D. K. CARTTER,
Chief Justice.

38 *Trustee's Report of Sale and Order Confirming Same. Filed Mar.* 7, 1888.

In the Supreme Court of the District of Columbia. In Equity.

(Filed March 7, 1888. R. J. Meigs, clerk.)

SUSAN W. EDWARDS *et al.*
vs.
CHAPMAN MAUPIN.

Trustees' report of sale and order conferring same.

To the honorable the judge of the supreme court of the District of Columbia, holding the equity court:

The report of James B. Green, trustee of Mary C. Macpherson's estate, appointed in the above cause, respectfully shows that on the thirty-first of January, eighteen hundred and eighty-eight, through the agency of J. H. Gray & Co., he sold to A. M. Kennedy for eleven thousand dollars in cash, to be paid upon the ratification of the sale, a certain lot and improvements on F street, in the city of Washington, between Fifth and Sixth streets, fronting twenty-eight feet on F street with an even depth of one hundred and one feet and nine inches, more fully described in said proceedings. Your trustee, while believing that his powers under the last will and testament of Mary E. Macpherson, deceased, are sufficient to enable him to execute a valid deed to the purchaser, is not willing to take such action without the approval of the honorable court. He believes the sale to be highly advantageous to all parties concerned in the trust, and prays the court to ratify the sale.

JAMES B. GREEN, *Trustee.*

WASHINGTON, *District of Columbia,* } *To wit:*

I hereby certify that on this — day of March, eighteen
39 hundred and eighty-eight, before me, the subscriber, a notary public in and for the city and District aforesaid, personally appeared James B. Green, the trustee making the foregoing report, and made oath in due form of law that the sale therein referred to was fairly made; that the price paid was the full value of the property, and that all matters and things therein stated are true to the best of his knowledge and belief.

[SEAL.] J. D. COUGHLAN,
Notary Public.

M'ch 7, '88.

Order Confirming Sale. Filed Mar. 7, 1888.

In the Supreme Court of the District of Columbia. In Equity.

SUSAN W. EDWARDS *et al.*
vs.
CHAPMAN MAUPIN.

Upon the petition and affidavit of James B. Green, trustee of the estate of Mary C. Macpherson, deceased, it is ordered this 7th day of March, eighteen hundred and eighty-eight, that the sale of real estate described in his report therewith submitted be, and the same is hereby, ratified and confirmed by this court.

W. S. COX, *J.*

EXHIBIT "A."

(Filed March 17, 1888. R. J. Meigs, clerk.)

No. 42 LEXINGTON ST., BALTO., *Nov. 9th*, 1883.

MY DEAR MRS. EDWARDS: A Washington property agent, through whom I do business there, makes me an offer of $5,500 for the F-street house and lot. This is what I asked for it after Maupin was removed, and I would like to have your opinion on the advisability of selling. At the present rental, $36 per month, it yields $432 per year, and at least $100 every year must be expended for taxes and repairs, whereas the proceeds could be made to yield you $350 a year per annum net. I will be out of town most of next week, and if you find it convenient stop at the office to-morrow morning.

Yours respectfully, JAMES B. GREEN.

JASPER M. BERRY, JR.,
Notary Public.

[SEAL.]

EXHIBIT "B."

BALTIMORE, *April* 12, 1884.

MY DEAR MRS. EDWARDS: I note the contents of your favor, received this morning, with some surprise. I think I could convince your other male adviser that $6,500 is a capital offer for the property. The value lies in the lot, and such a house as stands on it would not bring $20 a month here. We are getting all that it is worth in the shape of rent, and if you want me to raise to $40 a month it will be tantamount to raising the tenant off the premises. The longer you keep it the more inroads on the income will be made by repairs. My reluctance to be placed in a position of trust, where the trust property yields nothing, will compel me in a few years to give place to some one else, and I advise you to reconsider and reconfer with friends on the offer now under discussion.

Yours respectfully, JAMES B. GREEN.

[SEAL.]

JASPER M. BERRY, JR.,
Notary Public.

41 EXHIBIT "C."

BALTIMORE, *April* 16*th*, 1884.

MY DEAR MRS. EDWARDS: My course is plain now to write to the agent through whom the offer came in Washington, declining it. The increase of your income and making it more certain have been my only objects, and you are the best judge whether they are desirable or not. Instead of being depressed, the real estate market in parts of Washington, and among them the locality, is quite active and buoyant. Property agents say that the Pension Office in the square has stimulated prices, and while I trust your hopes for the future may be realized, neither you nor Alice must complain of me if they are not. Would you object to saying how much you think the property is worth? The will gives the trustee a discretion, and the interests of people to come after you are as well to be considered as yours, you and Alice having life estates, and if we should by good fortune have $7,000 bid for it I would feel it my duty to accept that sum or to ask the court to relieve me of the trust.

Yours respectfully, JAMES B. GREEN.

JASPER M. BERRY, JR.,
Notary Public.

[SEAL.]

EXHIBIT "D."

LOUISA C. H., VA., *April* 8*th*, 1885.

MY DEAR MRS. EDWARDS: Clark's bill for repairs is thirty-($31.82) one dollars and eighty-two cents, and having ($30.00) thirty dollars of this amount I deduct the difference from the present month's remittance. This, together with one ($1.00) dollar
42 for collection and ten dollars ($10.00) on tax bill for '85, puts up ($12.82) twelve — eighty-two cents and leaves the inclosed balance ($23.18) twenty-three dollars and eighteen cents. Please sign and return receipt as usual. You made no reply to the offer of six thousand dollars and, reversing the ordinary rule of interpretation, I take that silence for dissent, and will so advise the party.

Yours respectfully, JAMES B. GREEN.

[SEAL.]

JASPER M. BERRY, JR.,
Notary Public.

EXHIBIT "E."

LOUISA C. H., VA., *January* 18*th*, 1886.

DEAR MRS. EDWARDS: I certainly have the receipted bill for the roofing at 511 F street as I have for every dollar expended on that property to date. The tenant does not usually have repairs made or pay for them out of the rent, but the case was so urgent, and I told Mrs. Evans if she waited till the beginning of the year it should be done. I got an estimate of the costs beforehand, and there is no cause for complaint. It will be time enough to consider the ques-

tion of renting offices when the house becomes vacant. Standing back from the street as it does signs cannot be readily seen, and it is a little inaccessible. If it is put into Waggaman's hands he will charge five per cent. for collections and not make up the taxes by installments of $5.00 per month. I will say frankly, however, that my trusteeship was not undertaken with a view to profit, nor has it been profitable, and should you and Alice desire a change in that regard I will put no obstacle in the way toward it.

Yours respectfully, JAMES B. GREEN.

[SEAL.] JASPER M. BERRY, JR.,
Notary Public.

43 EXHIBIT "F."

LOS ANGELES, CAL., *Oct. 1st*, 1886.

MY DEAR MRS. EDWARDS: I have had no response to my last, relative to repairs needed to the interior of 511 F street, but I suppose they absorb the September rent. Mr. Waggaman has not reported on that point. This morning's mail brings me a letter from a real-estate firm in Washington saying they have an offer for the property of eighty-five hundred dollars, which would net us, after court expenses and commissions are paid, nearly eight thousand dollars. Will you take it? If an increase of income be any object to you my advice is not to let the opportunity slip. The older the house gets the less rent it will bring and the more repairs will be needed. We may return to the East during the winter or spring, but I can arrange the transaction as well from this point as on the spot. Answer without delay, and oblige,

Yours respectfully, JAMES B. GREEN.

[SEAL.] JASPER M. BERRY, JR.,
Notary Public.

EXHIBIT "G."

240 S. FORT STREET,
LOS ANGELES, CAL., *Oct. 22nd*, 1886.

DEAR MRS. EDWARDS: I am in receipt of a telegram saying that the F-street property has been sold for eight thousand five hundred dollars cash, subject to ratification by the court. Before sending in my report of sale to the court I want to overcome your objections to parting with the property at that price. Real-estate men and disinterested parties in Washington say that the transaction is a splendid sale, and if you apply your reason to the question you
44 must agree with them. You and Alice would have a steady income of twenty dollars a month each from eight thousand dollars invested at six per cent., while now you hardly average fourteen. I think most of the money could be loaned on good Washington property, secured by deeds of trust, at seven per cent. I have a thoroughly reliable friend there to manage the investments. If we hold on the income is bound to diminish from natural depre-

ciation of the house. I have full power to consummate the sale by the will and the decree appointing me trustree without your concurrence, but it would be far more pleasant to proceed with the consent of yourself and Alice, if you have confidence in my judgment and integrity and want me to continue the management of your affairs. Do not let any false hopes or foolish talk about higher prices by others deter you from giving me an immediate and favorable reply.

Yours respectfully, JAMES B. GREEN.

[SEAL.] JASPER M. BERRY, JR.,
Notary Public.

EXHIBIT "H."

240 S. FORT STREET,
LOS ANGELES, CAL., *Oct.* 23*d*, 1886.

MY DEAR MRS. EDWARDS: Yours of the 16th is before me, and, replying, let me say that my only object in desiring to sell is to make your income larger and more certain and prevent the constant complaints of unnecessary expenses. These considerations do *no* not seem to weigh much against a possible future advance in the property with you, and I will refrain from reporting sale to the courts in deference to your wishes. As I said before, my powers are ample, but I do not care to exercise them at the expense of unpleasant relations with you. Mr. Waggaman does his best under the circumstances. Mrs. Green and I join in reciprocating your kind regards.

Yours respectfully. JAMES B. GREEN.

[SEAL.] JASPER M. BERRY, JR.,
Notary Public.

EXHIBIT "I."

240 S. FORT STREET,
LOS ANGELES, CAL., *November 4th*, 1886.

MY DEAR MRS. EDWARDS: My last has set your mind at rest, I hope, on the question of immediate sale. I telegraphed the parties that under the circumstances I would not ask the court to confirm the transactions. Nobody but me has authority to sell, and if Mr. Waggaman had it on his list at two and a half a foot it was merely as a test of the market. You let the remarks of outside parties give you too much uneasiness. There are about twenty-eight hundred square feet in the lot, which would make it worth seven thousand dollars at two and a half a foot, while the offer I have just rejected is at the rate of three. There is a limit to the advance of property everywhere, and I think twelve thousand dollars would be a fabulous price. I sincerely hope, however, you may live to reap the benefit

of higher figures than the last offer and not to regret stopping the sale. With kindest regards to the family,

I am, yours respectfully, JAMES B. GREEN.

[SEAL.] JASPER M. BERRY,
Notary Public.

46 EXHIBIT "K."

240 S. FORT ST.,
LOS ANGELES, CAL., *November 6th*, 1886.

W. H. H. Raleigh, Esq.

DEAR SIR: In response to yours of Oct. 28 I have to say that I wrote to Mrs. Edwards, a day or two after announcing the sale at eighty-five hundred dollars, that I would not report the sale for ratification in view of her opposition, and this promise I will keep, though against my judgment and likely to involve me in a legal contest with the real estate broker and the purchaser. The latter offers to pay the former's commissions (two hundred and fifty dollars) in addition to the eighty-five hundred, and Mrs. Edwards wrote me more than two years ago that she would not consent to a sale for less than the offer made her mother which you allude to (eight thousand dollars), which, if it meant anything, meant that she would agree to part with it on those or better terms. The life tenants, she and Alice, are not getting much of an income out of the rent, and to improve this and make it more certain was my only purpose in wishing to sell, but I will let them stand in their own light if they desire. As to the trusteeship it has never been the source of any profit to me, but the property in my hands has been kept up and has increased handsomely in value, and, to be frank with you, I would rather remain trustee until the closing up of the estate, when I will become entitled to commissions as a compensation for my services. As a business man you will readily grasp this proposition. I rather expect to be East next spring, and until I return Mr. Waggaman can be trusted to collect and disburse the rent. I have a request to make of all of you, in conclusion, viz., if any person approaches you for information as to the recent sale have nothing to say on that subject, for I am competent to resist the claimants, and remarks or letters to them might complicate the situation.

Yours respectfully, JAMES B. GREEN.

47 P. S.—I want you to understand that last request clearly, so add that the responsibility for stopping the sale is to be always assumed by Mrs. Edwards and Alice, and I do not ask them to deny that responsibility. Mere loose talk about the property being worth more would not be a sufficient reason for objecting to the sale in court, and this is what I want to have avoided.

Yours, J. B. G.

[SEAL.] JASPER M. BERRY, JR.,
Notary Public.

EXHIBIT "L."

240 SOUTH FORT ST.,
LOS ANGELES, CAL., *December 2nd*, 1888.

MY DEAR MRS. EDWARDS: You will please take this in reply to your favor of November 23rd. If ever a trustee did his whole duty as to the subject-matter of the trust and the people interested therein I am he, but, as your mind seems to favor my withdrawal, I state frankly and calmly the terms on which I will retire. If the property be worth what you and your friends value it at (twelve thousand dollars) my commissions, at five per cent., on its sale will be six hundred dollars, but estimating on the sale I recently made at eighty-five hundred dollars as the true basis four hundred and twenty-five dollars will be my compensation. Nearly two thousand in rent and collection from Chapman Maupin have passed through my hands since I took charge, and the commissions, at five per cent., on this amount would be a hundred dollars, and this to the four hundred and twenty-five dollars add you have the amount I am called upon to relinquish. If you send me a draft on
48 New York for five hundred and twenty-five dollars I will petition the court let me resign, release my securities, and appoint Mr. H. H. Raleigh in my stead. I will then turn over to him my papers and property belonging to the estate. If this is not agreeable let me report the sale, as the parties are urging me to do, or remain trustee until the sale is closed without any unreasonable demands for more income and complaints.

Yours respectfully, JAMES B. GREEN.

[SEAL.] JASPER M. BERRY, JR.,
Notary Public.

P. S.—Please remember Mr. Maupin demanded and received ten per cent. commission on his collections as executor and trustee.

EXHIBIT "M."

240 S. FORT STREET,
LOS ANGELES, CAL., *December 19th*, 1886.

DEAR MRS. EDWARDS: Replying to yours of the 13th, I have to say that I have refrained from selling the property without your consent repeatedly, and refused to confirm this last sale because you objected. The court allowed Maupin ten per cent. for collecting rent, and the dollars you spoke of as having been retained is not more than one-seventh of that. Your insisting on my retiring without cause makes me demand full compensation. If the commissions were my motive for selling I should have the sale ratified by telegraph. The parties are still insisting on their rights, and you are very unkind and ungrateful to put the sale on that ground. What do you mean by abiding by the decision of the court? Do you want me to apply for my own removal and the appointment of Mr.

Raleigh and submit my claims? I would rather report the
49 sale and turn the proceeds over to him as the new trustee, less my commissions. A patient waiting for the settlement of the estate would be the least expensive and least troublesome course for all parties.

Respectfully, JAMES B. GREEN.

[SEAL.] JASPER M. BERRY, JR.,
Notary Public.

EXHIBIT "N."

MEMPHIS, TENN., *May 19th*, 1887.

DEAR MRS. EDWARDS: Please sign and return the written receipt, and with kind regards from wife and self, let me remain,

Yours repect., JAMES B. GREEN.

[SEAL.] JASPER M. BERRY,
Notary Public.

EXHIBIT "O."

LOUISA C. H., VA., *Aug. 11th*, 1887.

MY DEAR MRS. EDWARDS: The tenant of No. 511 F street informs me that owing to the illness of her husband she will not be able to pay the rent till later in the month. When she pays I will remit. Mr. Waggaman said he felt embarrassed by certain instructions rec'd from you as to accounting to your attorney. I relieved him by revoking his agency, and I pronounce your conduct toward me too bad.

Yours respectfully, JAMES B. GREEN.

[SEAL.] JASPER M. BERRY, JR.,
Notary Public.

49½ EXHIBIT "P."

VALENTINE HOUSE, RICHMOND, VA., *Mar. 3d*, 1888.

Mr. W. H. H. Raleigh.

DEAR SIR: I think it my duty to inform you that I have accepted an offer of eleven thousand dollars for the F-street property in Washington, and you will please acquaint the ladies with the facts. The condition of the house and the inadequacy of its income-producing capacity make it a breach of trust for me to hold it in the face of such an offer. As time goes on it is bound to get worse. I will reinvest the proceeds of sale in six per cent. deeds of trust on real estate, and I say frankly to you that I invite the most minute criticism of my motives and administration, and I am not to be deterred from my purpose by threats or litigation. I do not covet unpleasant relations with any one interested in the property, and I should dislike exceedingly to see it impaired by lawsuits. I address this to you because you took part in prevailing on me to

cancel the previous sale and because as a business man you will take a calmer and more reasonable view of my position than the ladies.

Yours respectfully,

[SEAL.] JAMES B. GREEN.

P. S.—M'ch 7th, 1888. Postmark, Washington, D. C. I withheld this to let you know results.

Sale confirmed to-day and money paid; will see you to-morrow or next day.

J. B. G.

[SEAL.] JASPER M. BERRY, JR.,
Notary Public.

50 *Petition of Susan W. Edwards and Alice Tyler.*

In the Supreme Court of the District of Columbia, Holding a Special Term in Equity.

SUSAN W. EDWARDS *et al.*
vs.
CHAPMAN MAUPIN, Trustee. } No. 7907.

To the honorable the justice holding the special term in equity:

The petition of Susan W. Edwards and Alice Tyler respectfully represents—

That heretofore they filed their bill in this cause, above entitled, to wit, on November 2d, A. D. 1881, for the object and purpose of substituting a trustee in the place and stead of the defendant, Chapman Maupin; that after due proceedings James B. Green, then residing in the city of Baltimore, Maryland, was by decree of this court substituted in the place and stead of the said Maupin as trustee under the will of Mary E. Macpherson, as will more fully appear by reference to the records of this cause, to which reference is hereby made, and they are prayed to be considered and taken as a part of this petition; that the said Green duly qualified as trustee, giving bond in the sum of eight thousand dollars, and entered upon his duties as trustee, taking charge of the real estate mentioned in said will; that at the time of his appointment or substitution the said Green was in good standing and possessed of considerable financial means; that subsequently to his appointment the said Green became and is now utterly insolvent, and removed his residence from the city of Baltimore to the State of California; that subsequently to his said removal to California, to wit, in A. D. 1886, these petitioners learned that the said Green was attempting to sell the said real estate in this city, of which he was substituted trustee, without their knowledge and at a grossly inadequate price;

51 that they thereupon interfered and succeeded in stopping said proposed sale; that in consequence of said secret attempt to sell by said Green, his insolvency, and his being incapable physically and on account of his residence to properly manage

the real estate in this city, these petitioners, both personally and by their agent and representative, informed the said Green that they were unwilling to have him continue to be trustee and desired him to resign or they would institute proceedings to have him removed, and again informed him, as they had repeatedly done before, that they were unwilling to have said real estate estate sold; that in reply the said Green stated repeatedly to them and their representatives that he would resign the trust as soon as he could come East, which would be in less than a year, and that he would follow the wishes of your petitioners and make no sale, nor attempt to make one; and your petitioners herewith file copies of the letters of the said Green to them and to their representative, marked Exhibits A, B, C, D, E, F, G, H, I, K, L, M, N, O, and which are prayed to be taken as a part of this petition.

That your petitioners, trusting to the promises and representations of said Green, waited for him to come to this District or Baltimore to fulfill his promises and resign his trust, and had no knowledge or information that he was taking any steps looking to a sale of said real estate until March 8th, A. D. 1888, when their representative, William H. H. Raleigh, the son-in-law of your petitioner, Edwards, received by mail in Baltimore city, a letter from the said Green, a copy of which is hereto annexed, marked Exhibit P, and prayed to be taken as a part hereof.

That the said Raleigh, as the representative of your petitioners, immediately came to the city of Washington and then, for the first time, learned of the petition or report filed in this cause by the trustee on March 7th, A. D. 1888, and the order of the court thereon on the same date; and, further, that the said Green had obtained
52 the purchase-money in a bank cashier's check on New York city and had left this city; that the said Raleigh traced the said Green to Baltimore city and there had an interview with him, in which the said Green stated that he had the money and did not propose to be bound by the wishes of the parties benefited by the trust, and refused positively to resign the trusteeship; that the said Green left Baltimore city next morning for Richmond, Virginia, where your petitioners are informed he now is; that the amount received by said Green from said sale was, as these petitioners are informed, $10,644.50; that his bond in this cause is for only $8,000; that he is utterly insolvent; that the said real estate was sold by him for cash and at a price much below its true value, and these petitioners believe and allege the said sale was made purposely, without the knowledge of these petitioners, and for the object and purpose of defrauding them.

Your petitioners therefore pray that the order passed by this court on March 7th, A. D. 1888, on the report of said Green, confirming his reported sale, be set aside as improvidently made; that the said James B. Green be removed from his trusteeship in this cause and some responsible person be substituted as trustee under said will; that your petitioners may have such other and further relief as to this

honorable court may appear proper to their cause, the premises being considered.

SUSAN W. EDWARDS.
ALICE TYLER.

Witnesses:

G. W. S. MUSGRAVE,
JASPER M. BERRY, JR.

HENRY WISE GARNETT,
LEIGH ROBINSON,
Sol'rs for Pet'ers.

53 We do solemnly swear that we have read the petition by us subscribed and know the contents thereof, and that the facts therein stated upon our own personal knowledge are true, and those stated upon information and belief we believe to be true.

SUSAN W. EDWARDS.
ALICE TYLER.

STATE OF MARYLAND, *Baltimore City,* } *ss:*

Subscribed and sworn to before the undersigned, a notary public of said city and State, this sixteenth day of March, 1888.

[SEAL.] JASPER M. BERRY,
Notary Public.

STATE OF MARYLAND, *Baltimore City,* } *sct:*

I hereby certify that Jasper M. Berry, Jr., Esquire, before whom the annexed affidavit was made and who has thereto subscribed his name, was at the time of so doing a notary public of the State of Maryland, in and for the city of Baltimore, duly commissioned and sworn, and that to all acts done by him in that capacity full faith and credit are due and ought to be given, and that I am well acquainted with his handwriting and believe that his signature thereto is genuine.

In testimony whereof I hereto set my hand and affix the seal of the supreme court of Baltimore city this 16 day of March, A. D. 1888.

JAS. BOND,
[SEAL.] *Clerk of the Superior Court of Baltimore City.*

54 *Rule to Show Cause. Filed Mar.* 17, 1888.

In the Supreme Court of the District of Columbia.

(Filed March 17, 1888. R. J. Meigs, clerk.)

SUSAN W. EDWARDS *et al.*
vs.
CHAPMAN MAUPIN, Trustee. } Equity, No. 7907.

Rule to show cause returnable in five days.

This cause coming on to be heard on the petition of Susan W. Edwards and Alice Tyler, filed herein March 17th, 1888, it is by the court this 17th day of March, 1888, adjudged, ordered, and decreed that James B. Green, the trustee appointed by the decree filed in this cause March 29th, A. D. 1882, and A. M. Kenaday, the purchaser named in the report of said James B. Green, trustee, filed herein on March 7th, A. D. 1888, show cause within five days from the date of this order why the order of this court passed on the 7th day of March, 1888, ratifying and confirming the sale reported by said James B. Green, trustee, should not be vacated and set aside as having been improvidently passed, the sale so ratified vacated and set aside, and why the said James B. Green should not be removed from his office of trustee and some other appointed in his stead.

WALTER S. COX, *J.*

Rule and Affidavit of Service on James B. Green. Filed Mar. 23, 1888.

In the Supreme Court of the District of Columbia.

(Filed March 23, 1888. R. J. Meigs, clerk.)

SUSAN W. EDWARDS *et al.*
vs.
CHAPMAN MAUPIN, Trustee. } Equity, No. 7907.

Rule and affidavit of service of same on James B. Green.

55 This cause coming on to be heard on the petition of Susan W. Edwards and Alice Tyler, filed herein March 17th, 1888, it is by the court this 17th day of March, 1888, adjudged, ordered, and decreed that James B. Green, the trustee appointed by the decree filed in this cause March 29th, A. D. 1882, and A. M. Kenaday, the purchaser named in the report of said James B. Green, trustee, filed herein on March 7th, A. D. 1888, show cause within five days from the date of this order why the order of this court passed on the 7th day of March, 1888, ratifying and confirming the sale reported by said James B. Green, trustee, should not be vacated and set aside as having been improvidently passed, the sale so ratified vacated and set aside, and why the said James B. Green

should not be removed from his office of trustee and some other appointed in his stead.

[SEAL.] WALTER S. COX, *J.*

A true copy.
Test: R. J. MEIGS, *Clerk*,
By M. A. CLANCY, *Ass't Clerk.*

UNITED STATES OF AMERICA, *Eastern District of Virginia*, } *To wit:*

This day personally appeared before me Jno. H. Overbry, special deputy U. S. marshal, and made oath that he had served a copy of the within on the said James B. Green, trustee, at Richmond, on the 19th day of March, 1888.

Given under my hand and seal, at Richmond, in said district, this 19th day of March, 1888.

[SEAL.] M. F. PLEASANTS,
U. S. Com'r, Ea. Dist. Va.

56 *Affidavit of A. M. Kenady. Filed Mar.* 23, 1888.

Supreme Court of District of Columbia.

SUSAN W. EDWARDS
vs.
CHAPMAN MAUPIN, Trustee. } No. 7907.

I, Alexander M. Kenaday, of Washington, D. C., on oath depose and say that I bought the premises No. 511 F street N. W., Washington, D. C., being the west part of lot No. 2, in square 487, of James B. Green, trustee, through his agents, J. H. Gray & Co., paying therefor the sum of $11,000.00. This sale was consummated on the 7th day of March, 1888, and the sum paid was $1,000.00 above my offer, and more, I think, than any other person would have given for the same at that time. I was induced to pay that sum because I was the owner of the adjoining part on the east side of said lot, and desired to increase my frontage with a view to improving the whole lot. I agreed with Mr. Green's agents to purchase the property on the 31st day of January, paying down $500 on that day. I never saw Mr. J. B. Green, the trustee, until the day I paid to him the money. A year or more ago I made an overture by letter to Mr. Green,
57 then residing in California, offering to exchange a piece of improved property on H street northwest, belonging to me, for his premises on F street, which he declined, and I gave no further attention to the subject until his agents, Messrs. J. H. Gray & Co., called on me and offered the property for sale. I have owned the east part of said lot—30 feet front on F street—since 1876, with two small brick buildings, and have not improved it because of its inconvenient size for building purposes. I offered to sell my portion of the lot to Mr. Norris about two years ago for about $7,500; but, finding a technical informality in the abstract of title (which I have

since had rectified), he declined to purchase. I have since refused to entertain proposals for this lot, desiring to use it for my own purposes. I invested my money in this purchase on the presumption that it was a fair and honest transaction, approved by the court in due form, and after having paid for and received an abstract and certificate of title to said property as vesting in James B. Green, trustee, with power in him to sell the same, us appears in said abstract and opinion of the Columbia Title Insurance Company.

ALEXANDER M. KENADAY.

DISTRICT OF COLUMBIA, }
City of Washington. }

Subscribed and sworn to before me this 22nd day of March, A. D. 1888.

[SEAL.] JOHN N. WALKER,
Notary Public.

58 *Affidavit of Harriet V. Evans. Filed Mar. 23d,* 1888.

Supreme Court of the District of Columbia.

SUSAN W. EDWARDS }
vs. } No. 7907.
CHAPMAN MAUPIN, Tr. }

I, Harriet V. Evans, wife of Charles P. Evans, of Washington, D. C., on oath do depose and say: I am of lawful age. I have resided for five years at No. 511 F street N. W., on the premises managed by Mr. James B. Green, trustee. The house is of wood; has no cellar; is destitute of so-called modern improvements; is in parts badly out of repair, and is generally in very poor condition. I paid $33 per month when I first came. Afterwards it was raised to $36, and again to $38, which I have always considered a high rent, there being so many objections to the house. In the high rent he required and the restrictions he has always kept the expense for repairs under Mr. Green has thoroughly satisfied me that he was very careful of the interests of the owners. The value of the premises is in the lot, and of the lot, in its location, I asked Mr. Green about two years ago if he would take $7,000 for the property. He replied he would not. Not far from that time Mr. Thos. E. Waggaman offered it for sale at auction. I saw the auction going on. I cannot now make sure what the highest bid was, but I think about $7,000. It was bid in; not sold. I am not interested in this controversy.

HARRIET V. EVANS.

Sworn and subscribed before me this 22nd of March, A. D. 1888.

[SEAL.] JOHN EVANS,
Notary Public.

59 EXHIBIT G.

Affidavit of T. W. Tyrer. Filed Mar. 29, 1888.

Supreme Court of the District of Columbia.

SUSAN W. EDWARDS
vs.
CHAPMAN MAUPIN *et al.* } Eq., No. 7907.

I, Theodore W. Tyrer, of Washington, D. C., on oath depose and say that I am of lawful age. I am well acquainted with the premises No. 511 F street N. W., the lot in controversy in this suit. I have been engaged in the real-estate business, and I had an office directly opposite this property on F street. I regard the sum of eleven thousand dollars, or nearly four dollars a foot, as the full value of said property, and that the owner was exceptionally fortunate to find a purchaser to give that amount for it.

T. W. TYRER.

Subscribed and sworn to before me this 26th day of March A. D. 1888.

THOMAS W. SORAN,
[SEAL.] *Notary Public.*

60 EXHIBIT A.

Affidavit of Madison A. Ballinger. Filed Mar. 29, 1888.

Supreme Court of the District of Columbia.

SUSAN W. EDWARDS
v.
CHAPMAN MAUPIN, Tr. } Eq., No. 7907.

I, Madison A. Ballinger, of 1339 15th street N. W., Washington, D. C., of lawful age, on oath depose and say I was from November 1, 1885, to March 1, 1888, a member of the firm of J. H. Gray & Company, at No. 622 F street, Washington, real-estate dealers.

I was and am well acquainted with the premises No. 511 F street, in this suit, which was sold by said firm while I was a member thereof. Said firm was also agents for thirty feet of ground immediately to the east of said premises, from Nov. 1, 1885, for about one year thereafter, and advertised said latter lot continuously for nearly one year for sale at the price of $10,000, and never received an offer therefor in excess of $8,500 until after 511 F street was sold, in October, 1886, to Charles R. Connor, as hereinafter stated. We made the sale of No. 511 F street for James B. Green, trustee, to one A.
M. Kenady, at eleven thousand dollars ($11,00-), about Jan.
61 31, 1888. We had made diligent and earnest efforts to get a higher and better price for said property, but were unable to do so and in my opinion we could not then have obtained that

price of $11,000 for the property from any one we knew except said Kenady, and not from him except that he owned the ground the thirty feet on the east thereof, and he believed that by putting the two properties together they would be made more valuable.

After we had sold the property, 511 F street, to Chas. A Connor, as hereinafter stated, Mr. Connor was desirous also of uniting the two properties above mentioned. He first made us an offer for the thirty feet owned by Kenady of nine thousand dollars ($9,000), later ninety-five hundred, and finally ten thousand dollars ($10,000). We could not get him to offer any more than that, and as the price of said thirty feet had been advanced about that time to $10,500 we were unable to sell to him.

I feel that I am well acquainted with the value of the real estate in controversy. It is twenty-eight feet front by a depth of 101 9¾ feet, and the price at which it was sold is its full value—very nearly four dollars a foot. The property has no alley in the rear and no means of reaching the lot at all except from its front. This
62 property was first placed in our hands for sale in the early part of the year 1886 by Mr. Green, at the price of $9,300. We made considerable effort to sell at that price, but failed to do so, and eventually sold it about October, 1886, to one Charles R. Connor at $8,750. Mr. Green thereafter wrote to us that the heirs seemed unwilling to dispose of the property at that price, and he refused to report the same to the court, although we urged him to do so, we being threatened with a suit by Mr. Connor on account of the expenses he had incurred in making an abstract of title and raising the money to comply with the terms of sale.

After this transaction we had nothing more to do with the property till December, 1887, when it was again put in our hands to sell at a minimum price of $11,000, with the understanding that we were to get more if we could. We sold at $11,000 because we found it impossible to get more. Mr. Green seemed anxious to get every dollar out of the property that he could and always loyal to the best interests of the beneficiaries.

He showed the feeling of responsibility for the heirs to an unusual degree, and he took the extraordinary precaution to call to his assistance a friend of his to count his money and examine
63 the papers he was called upon to execute that had been prepared for him by the president of the Columbia Title Company and the firm of Gray & Company. He had never met us; our business was conducted wholly by correspondence, and I was exceedingly gratified to witness the caution taken by him in his sightless condition. He would not take money, nor would he receive a check made payable to James B. Green simply, but insisted upon a check of one of the banks in Washington upon New York for the amount due him, except a small balance for expenses, I presume, and this draft he insisted should be endorsed to him as trustee, being made payable to Mr. Kenady, the purchaser.

I might add in this connection that when the property was last placed in our hands, in December last, Judge Gray & Mr. Johnson, the two senior members of the firm, expressed the opinion that we

ought not to encourage Mr. Green to believe that the property could be sold at $11,000 in the then dul-ness of the real-estate market, and that it was unwise for us to spend money or time in any effort to sell at that figure. Had it not been for the fact that Mr. Kenady owned the adjoining property, and bought to widen his front,
64 it is my opinion it would not have been sold and could not have been sold at that price. I have no interest whatever in this suit.

M. A. BALLINGER.

Subscribed and sworn to before me this 26th day of March, A. D. 1888.

THOMAS W. SORAN,
[SEAL.] *Notary Public.*

EXHIBIT C.

Affidavit of L. L. Johnson. Filed Mar. 29, 1888.

I have read the affidavit of M. A. Ballinger above and I concur in the statements of facts as to the sale made by J. H. Gray & Co., of which firm I was at the time of said sale and now a member. Said statements are, to the best of my knowledge and belief, true.

L. L. JOHNSON.

Subscribed and sworn to before me on this 28th day of March, A. D. 1888.

JOHN M. LAWTON,
[SEAL.] *Notary Public.*

65 *Affidavit of J. H. Gray. Filed Mar.* 29, 1888.

In the Supreme Court of the District of Columbia. In Equity.

SUSAN W. EDWARDS *et al.*
vs.
CHAPMAN MAUPIN *et al.*

DISTRICT OF COLUMBIA, *To wit:*

I hereby certify that on this 21st day of March, 1888, before me, the subscriber, a notary public in and for the District aforesaid, personally appeared Madison A. Ballinger and made oath in due form of law that the sale of premises known as five hundred & eleven F St. N. W., Washington, D. C., mentioned in the above proceedings, was made by Jas. B. Green, trustee, through the agency of J. H. Gray & Co., real-estate brokers, of which firm the affiant was a member, on or about the 31st of January, 1888, to A. M. Kenaday, for eleven thousand dollars cash—five hundred dollars paid at that time, and the balance to be paid as soon as a good title thereto was made to said Kenaday.

And, further, that the price obtained for said property was its full

value, in his opinion, and that the said sale was fairly made, so far as he has any knowledge thereof.

66 That in the negotiations preceeding said sale the trustee appeared to be anxious and solicitous to guard the interests of the beneficiaries in the trust; and, further, that diligent effort was made by said Gray & Co. to obtain a price for said property in excess of eleven thousand dollars, without success; that on a former occasion, to wit, in Oct., 1886, the said property was in the hands of said J. H. Gray & Co. for sale, and a sale was made by them to one C. R. Connor for the sum of eighty-seven hundred and fifty dollars, which was reported to the trustee, who was then at Los Angeles, Cal., and that the said trustee, after much consideration & correspondence, refused to report said sale to court or consummate the same, on the ground that objection had been made by parties in interest, & that his remoteness from Washington made it impracticable for him to get personal information of the then value of the property; and, further, this affiant believes that but for the fact that said Kenaday owned a lot adjoining said property and desired to build on the two lots together it could not have been sold to him at eleven thousand dollars.

GRAHAM L. GORDON,
Notary Public.

[SEAL.]

M'ch 21, 1888.

67 I hereby certify that Jonathan H. Gray and L. L. Johnson personally appeared before me and, being duly sworn, stated that they had both heard the affidavit hereinbefore written of M. A. Ballinger, and that the statements therein contained are true in their opinion, and that they are now members of the firm of J. H. Gray & Co.

[SEAL.] GRAHAM L. GORDON,
Notary Public.

M'ch 21, 1888.

68 EXHIBIT "F."

Affidavit of T. E. Waggaman. Filed Mar. 29, 1888.

Supreme Court of the District of Columbia.

SUSAN W. EDWARDS
vs.
CHAPMAN MAUPIN *et al.* } Equity, No. 7907.

Affidavit of Thos. E. Waggaman.

I, Thomas E. Waggaman, on oath depose and say I am of lawful age and in the real-estate business at No. 917 F street, Washington, D. C., and I am well acquainted with the value of real estate in Washington. I knew the premises No. 511 F street N. W., being 28 feet front, part of lot 2, sq. 487, and I had charge of the same at

one time in my business. I am informed it was sold in January for $11,000 cash. I regard this as a fair price.

THOS. E. WAGGAMAN.

Subscribed and sworn to before me this 20th day of March, 1888

CHARLES S. DRURY,
Notary Public, D. C.

[SEAL.]

69 *Affidavit of R. A. Fish. Filed Mar.* 29, 1888.

Supreme Court of the District of Columbia.

SUSAN W. EDWARDS
v.
CHAPMAN MAUPIN. } Eq., No. 7907.

I, Roswell A. Fish, on oath depose and say I am assessor of taxes of the District of Columbia. The books of my office show that Mary E. Macpherson is assessed for "of lot 2, square 487, for value of lot, $2,851, and value of improvement, $1,400," as per copy of tax bill hereto attached. Said assessment was made in the year 1886 and is the last assessment.

ROS. A. FISH,
Assessor, D. C.

Signed and sworn to in my presence on this the 29th of March, 1888.

CHARLES LANMAN,
Notary Public.

[SEAL.]

Copy of Tax Bill. Filed Mar. 29, 1888.

Folio 278.

WASHINGTON CITY.

Mary E. McPherson to the District of Columbia, Dr., for tax on real estate for the year ending June 30, 1888.

Tax $1.50 per $100 assessed valuation.

Square.	Lot.	Value of lot.	Value of impr'ments.	Total assessed value.
487	Of 2	$2,851	$1,400	$4,251

To 2nd half of tax $36 88

Address collector of taxes, D. C., District building, Washington, D. C.

70 *Order of Court on Above Motion. Filed Mar.* 23, 1888.

In the Supreme Court of the District of Columbia, Holding a Special Term in Equity.

(Filed March 23, 1888. R. J. Meigs, clerk.)

SUSAN W. EDWARDS *et al.*
vs.
CHAPMAN MAUPIN, Trustee. } No. 7907.

Order of court on above motion.

This cause coming on to be heard on the rule to show cause issued against James B. Green, trustee, and A. M. Kenaday, it is, this 23rd day of March, A. D. 1888, ordered that the trustee, James B. Green, pay into the registry of this court all the fund now in his hands as trustee in this cause, of every and all description, on or before the 28th day of March, A. D. 1888.

And on motion of his solicitor it is this day further ordered that the said James B. Green file his answer within one week from this day.

W. S. COX, *J.*

Report of Jas. B. Green, Trustee, to Order of 23*d March*, 1888. *Filed Mar.* 29, 1888.

The Supreme Court of the District of Columbia.

(Filed March 29, 1888. R. J. Meigs, clerk.)

SUSAN W. EDWARDS *et al.*
vs.
CHAPMAN MAUPIN. } No. 7907.

Report of Jas. B. Green, trustee, to order of 23d March, 1888.

And now comes the respondent, James B. Green, trustee, this 29th day of March, A. D. 1888, and respectfully reports to the court that he has been unable to comply with the order of the court,
71 passed on the 23d instant, to pay the fund into court on or before the 28th instant, for the reason that he has been confined to his bed by sickness and under charge of his physician and unfit to attend to business, and that to make the arrangement to send the fund to Washington requires his personal attendance, and he is ready and desirous of complying with said order just as soon as he is physically able to do so; and he files herewith affidavits of the facts, and prays the court to extend the time of said order in such manner as shall in view of his condition seem meet to the court.

By his attorney, FRANK W. HACKETT.

Answer of James B. Green to Petition, &c. Filed Mar. 29, 1888.

In the Supreme Court of the District of Columbia.

(Filed March 29, 1888. R. J. Meigs, clerk.)

SUSAN W. EDWARDS *et al.*
vs.
CHAPMAN MAUPIN. } In Equity. No. 7907.

To the honorable the judge of the supreme court of the District of Columbia holding the equity court:

The answer of James B. Green, trustee, to the petition of Susan W. Edwards and Alice Tyler in the above cause exhibited, praying the rescinding of an order confirming a sale of real estate by him reported and his removal from his trusteeship and the appointment of some other person in his place in said cause and the order passed thereon, respectfully shows that your respondent admits having been appointed trustee of the estate of Mary C. Macpherson, deceased, in the place and with the consent of Chapman Maupin, the surviving trustee named in the will of Mary C. Macpherson, by a decree passed in the above cause; and, further, your respondent shows that the said Chapman Maupin was empowered to
72 appoint his successor by said will of Mary C. Macpherson, which said will is filed as an exhibit in said cause and prayed to be read as a part of this answer; and that the said Maupin did, on the twenty-seventh day of February, eighteen hundred and eighty-eight, execute to your respondent a deed to that end, which said deed was recorded on March the third, eighteen hundred and eighty-eight, among the land records of the District of Columbia, and the same is prayed to be read as a part of this answer; and that, in pursuance of the powers vested in him by the decree of this court and the said deed, your respondent sold the real estate mentioned in his report filed in the above cause, which is prayed to be read as a part of this answer. Your respondent denies that the order ratifying said sale was improvidently made, or that the price paid for the property was inadequate. On the contrary, he avers that the valuation of both lot and improvements by the tax department of the District of Columbia is forty-two hundred and fifty-one dollars, and that eleven thousand dollars was its full value; and he also denies that there was in the transaction a single element contrary to good faith and fair dealing. As to value of the property and fairness of the sale, your respondent files herewith the affidavits of M. A. Ballenger, J. H. Gray, Thomas Johnson, A. M. Kennedy, Mrs. L. P. Crans, and Thomas C. Waggaman, marked, respectively, Respondent's Exhibits A, B, C, D, E, and F, and prayed to be taken as a part of this answer. Your respondent further shows that the improvements on said lot were fast falling to decay and becoming untenable; that the same, after allowing for taxes and repairs, was far less than the revenue to be derived from the secure investment

of eleven thousand dollars, less cost of sale; and, further, that the petitioner, Susan W. Edwards, is under the infirmities of advanced age, and that both she and Alice Tyler are timid and without much business knowledge, and that their fears and imaginations are easily worked upon, as your respondent believes they have been in this instance. Their so-called representative, William H.
73 H. Raleigh, was informed of the sale and of your respondent's intention of coming to Baltimore to see him. He did not have to trace your respondent there. On the 8th of March, 1888, the day following the completion of the sale, your respondent visited the office of said Raleigh, in Baltimore, and not finding him there called on the petitioners, at No. 1430 McCollough street, in that city, and informed them fully and frankly of the sale and of the advantages he hoped to realize for them from the investment of the proceeds. The said Raleigh and his wife were present at the latter part of this interview, and the former insisted offensively that your respondent should give up this trust to him, which your respondent, with some warmth, declined to do. Your respondent left that interview with the impression that the main element of discontent sprung from the said Raleigh and desire to have charge of the trust fund.

Your respondent further shows that he gave the bond of eight thousand dollars required by the decree; that while he is not in as prosperous circumstances as formerly his reverses were not of recent date, and he has never been obliged to take the benefit of any insolvent or bankrupt law. He endeavors to make a living by the practice of his profession. His physical condition was the same as to his want of sight when the trust was placed in his hands as now. Your respondent further shows that the trust has always been a care rather a source of profit or pleasure to him; but having assumed it at the request of the petitioners he did not regard it as a toy to be dropped or held according to the whimsical bidding of the life tenants, the petitioners, or given up on the desire of some one else to have it, and he will cheerfully lay down the burden now upon just compensation for his services.

Your respondent therefore prays that the petition may be dismissed, and that he may have such relief as to the court seems meet.

JAMES. B. GREEN.

FRANK W. HACKETT, *Solicitor.*

74 STATE OF VIRGINIA, *City of Richmond,* } *ss:*

This day before me, the undersigned, a notary public in and for said city, in said State, personally appeared James B. Green, whose name is signed to the foregoing answer, and made oath that the matters and things therein stated are true.

Given under my hand this 27th day of March, 1888.

F. H. McGUIRE,
Notary Public.

STATE OF VIRGINIA, *City of Richmond,* } *To wit:*

I, William P. Lawton, clerk of the hustings court of the city of Richmond, in said State (said court being a court of record), do hereby certify that F. H. McGuire, whose name is signed to the foregoing and accompanying certificate, is now and was at the time of signing the same a notary public in and for the said city, duly qualified and authorized under the laws of said State to administer oaths for general purposes and to take acknowledgments to deeds and other papers; that his said signature is genuine, and that all of his official acts are entitled to full faith and credit, and that the said attestation is in due form of law.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court this 27th day of March, 1888.

W. P. LAWTON, *Clerk.*

75 *Deed, Q. C. Received for Record M'ch* 3, 1888.

This deed, made this 27th day of February, eighteen hundred and eighty-eight, between Chapman Maupin, of Howard county, State of Maryland, surviving trustee, as hereinafter mentioned, of the first part, and James B. Green, of the city of Richmond, State of Virginia, trustee, of the second part.

Whereas by a decree of the supreme court of — District of Columbia, in equity, passed in a friendly and consent suit, entitled Susan W. Edwards *et al. vs.* Chapman Maupin, No. 7907, equity docket 21, the party of the second part was appointed trustee instead of and in substitution for the party of the first part; and whereas it has been suggested that in order to carry out fully the intent of said decree a conveyance of the property mentioned in said proceeding, with all the powers of the retiring trustee, should have been executed by him to his successor, now, this deed witnesses that, for and in consideration of the premises and sum of one dollar, receipt whereof is hereby acknowledged, the party of the first part doth grant and assign to the party of the second part and his successors all his right, title, and estate in and to all the prop-
76 erty, real, personal, and mixed, devised and bequeathed to the said party of the first part by the last will and testament of Mary E. McPherson, deceased, in trust for the uses and purposes set out in said will and coupled with all the powers thereby conferred on the trustees therein named.

Witness my hand and seal on the day and year above written.

CHAPMAN MAUPIN, *Trustee.* [SEAL.]

Witness:

MURRAY HANSON.

STATE OF MARYLAND, *City of Baltimore,* } *ss:*

I, Murray Hanson, a notary public, of the State of Maryland, in and for the city of Baltimore and State aforesaid, duly commis-

sioned and qualified, residing in the city of Baltimore aforesaid, do hereby certify that Chapman Maupin, party to a certain deed bearing date the 27th day of February, 1888, and hereto annexed, personally appeared before me, in the city aforesaid, he being personally well known to me as the person who executed the said deed, and acknowledged the same *the same* to be his act and deed.

77 In witness whereof I have hereunto set my hand and notarial seal, at Baltimore, this twenty-seventh day of February, A. D. 1888.

[SEAL.]

MURRAY HANSON,
Notary Public.

A.

STATE OF MARYLAND, *Baltimore City,* } *sct:*

I hereby certify that Murray Hanson, Esquire, before whom the annexed acknowledgement was made and who has hereto subscribed his name, was at the time of so doing a notary public, of the State of Maryland, in and for the city of Baltimore, duly commissioned and sworn, and that to all acts done by him in that capacity full faith and credit are due and ought to be given, and that I am well acquainted with his handwriting and believe that his signature thereto is genuine.

In testimony whereof I hereto set my hand and affix the seal of the superior court of Baltimore city this 28th day of February, A. D. 1888.

[SEAL.]

JAMES BOND,
Clerk of the Superior Court, Baltimore City.

78 *Affidavit of A. C. Gibbs. Filed Mar.* 31, 1888.

In the Supreme Court of the District of Columbia, Holding a Special Term in Equity.

SUSAN W. EDWARDS *et al.* *vs.* CHAPMAN MAUPIN. } No. 7907.

I, Archibald C. Gibbs, being of lawful age, on my oath do depose and say that I am a resident of the city of Baltimore, within the State of Maryland, but am engaged in the insurance business at No. 1001 F St. N. W., in the city of Washington, District of Columbia, and said insurance business, together with my having the management of certain real estate within said city of Washington, makes me conversant with the value of real estate situated in the said city.

That I am familiar with a certain house and lot on F St. N. W., numbered 511 and lying between 5th and 6th Sts., and from the location of said property, together with my knowledge of the continual increase in value of property in that vicinity, makes me regard said property as being very valuable, both as to present and prospective values.

That were I the owner of said property or held said property
79 in trust for others I would not sell said property for such an amount as said property was sold for on —— to —— ——, which amount is, in my estimation, far below its value, and more especially as the prospective value is so great that it would make the retention of all title, rights, and ownership to said property by me as owner or agent most desirable, in consideration of the improving location in which it is situated as aforesaid, which would enable me as owner or agent to lease the same at a far more profitable figure than could the said money received for said property be invested at interest.

A. C. GIBBS.

Sworn and subscribed to before me, Joseph T. Dyer, a notary public, this 26th day of March, A. D. 1888.

[SEAL.] J. T. DYER,
Notary Public.

80 *Affidavit of Thos. J. Staley. Filed Mar.* 31, 1888.

In the Supreme Court of the District of Columbia, Holding a Special Term in Equity.

SUSAN W. EDWARDS *et al.*
vs.
CHAPMAN MAUPIN. } No. 7907.

I, Thomas J. Staley, being of lawful age, on my oath do depose and say that I am a resident of the city of Washington, District of Columbia, and am a member of the firm of Staley & Hill, real-estate brokers, doing business in the said city.

That I am conversant with the value of property in and about said city.

That property in the vicinity of F St. between 5th and 6th Sts. is considered very valuable, being right in the line of improvements.

That the property in question—#511 F St. N. W.—I consider, at this dull season in our business, worth from $5.00 to $6.00 per square foot, and that $6.00 per foot would not be a very reasonable price, considering its value in the future, which will undoubtedly be a large amount.

THOMAS J. STALEY.

Sworn and subscribed to before me this 26th day of March, 1888.

[SEAL.] J. T. DYER,
Notary Public.

81 *Affidavit of Allen E. Hill. Filed Mar.* 31, 1888.

In the Supreme Court of the District of Columbia, Holding a Special Term in Equity.

SUSAN W. EDWARDS *et al.*
vs.
CHAPMAN MAUPIN. } No. 7907.

I, Allen E. Hill, being of lawful age, do on my oath depose and say that I am a resident of Washington city, and am a real-estate ag't; that I know of the property No. 511 F street northwest, being the west 28th feet of original lot 2, square No. 487, having been on same, and regard it worth fully five dollars a foot at this time, with a prospect of an increase in value, being in the line of improvements on F street.

ALLEN E. HILL.

Subscribed and sworn to before me this 27th day of March, 1888.

[SEAL.] THOMAS J. STALEY,
Notary Public.

82 *Affidavit of Wm. P. Young. Filed Mar.* 31, 1888.

In the Supreme Court of the District of Columbia, Holding a Special Term in Equity.

SUSAN W. EDWARDS *et al.*
vs.
CHAPMAN MAUPIN. } No. 7907.

I, William P. Young, being of lawful age, do on my oath depose and say that I am a resident of Washington city and have been for a long time; am a real-estate ag't, and am conversant with the values of properties in this city; that I well know the property No. 511 F street northwest, being the west 28 feet of original lot 2, square No. 487, and I regard the same worth at this time not less than five dollars per square foot, with a good prospective chance in the increase of value.

WM. P. YOUNG.

Subscribed and sworn to before me this twenty-seventh day of March, A. D. 1888.

[SEAL] A. S. TAYLOR,
Notary Public.

83 *Affidavit of J. Tarbell Dyer. Filed Mar.* 31, 1888.

In the Supreme Court of the District of Columbia, Holding a Special Term in Equity.

SUSAN W. EDWARDS *et al.*
vs.
CHAPMAN MAUPHIN. } No. 7907.

I, J. Tarbell Dyer, being of lawful age, on my oath do depose and say that I am a resident of and doing business as a real-estate broker within the city of Washington, District of Columbia, and being engaged in said real-estate business I am thoroughly acquainted with the value of real estate within the said city of Washington.

That I am conversant with certain property on F St. between 5th and 6th Sts., numbered 511, and know that said property, situated as it is in a neighborhood rapidly increasing in value, is worth at least $5.00 per square foot, and had I control of said property I believe I could make it bring more than that amount at this time; and, furthermore, I believe, having had said — appraised by other real-estate brokers, that it would bring $5.00 per foot at forced sale.

J. T. DYER.

Subscribed and sworn to before me this 26th day of March, 1888.
[SEAL.] THOMAS J. STALEY,
Notary Public.

84 *Affidavit of Susan W. Edwards. Filed Apr.* 7, 1888.

In the Supreme Court of the District of Columbia.

SUSAN W. EDWARDS *et al.*
vs.
CHAPMAN MAUPIN. } No. 7907.

STATE OF MARYLAND, }
City of Balto., } *ss:*

Before me, Jasper M. Berry, Jr., a notary public, duly appointed, in and for the city and State aforesaid, personally appeared Susan W. Edwards, who, being by me first duly sworn, on her oath says that she is one the heirs under the will of Mary E. McPherson, deceased, and interested in the *scs. qui trust.* whereof Jas. B. Green is trustee; that on or about the first of November, 1886, learning of the sale of the property, 511 F street N. W., Washington, D. C., she adopted every means possible to stop the confirmation of same, and to this end wrote to Mr. Jas. B. Green and to Mr. Thos. E. Waggaman, and from the latter learned that the sale had been made through Messrs. J. H. Gray and Co., real-estate ag'ts, of Washington, to whom she

immediately wrote, stating that she never knew that the property had again been offered for sale, as Mr. Green had repeatedly
85 promised he would not sell it; and she further stated she would oppose the sale, and that the heirs did not want the property sold then or at any future time, as it was intended by her mother to be a permanent investment for herself, her children, and all the heirs; that her letters were positive and sufficient to put them on their guard as to that or any other efforts to dispose of said property. In addition to writing to said J. H. Gray & Co. she had her daughter, Nannie Raleigh, to go to Washington to see Mess. Gray & Co. to stop the sale, &c.; also had Alice Tyler to see them for same purpose, and after this had Mr. W. H. H. Raleigh to go to Washington to see Mr. C. G. Lee, an att'y, whom she learned was acting for Mr. Green, which efforts resulted in an abandonment of the sale by said Green and Gray & Co.

S. W. EDWARDS.

Subscribed and sworn to before me this 28th day of March, 1888.
[SEAL.] JASPER M. BERRY, JR.,
Notary Public.

Affidavit of Alice Tyler. Filed Apr. 7, 1888.

At the same time personally appeared Alice Tyler, who, being by me first duly sworn, on her oath says that she is one of the
86 heirs in the *ses. que trust.* whereof Jas. B. Green is trustee, and that during the month of November, 1886, learning of the sale of the property 511 F street northwest, Washington, D. C., she, in company with Mrs. W. H. H. Raleigh, went to see Mess. J. H. Gray & Co. with intention to stop the sale, and that they were referred to Mr. Ballinger, one of the firm of said J. H. Gray & Co., whom they saw, and that, learning the sale had not been confirmed, she appealed to him to desist from further efforts in that direction and positively stated to said Ballinger that she nor her grandmother had any idea of selling said property and would not consent to that or any future sale; that a few days thereafter said Ballinger accosted her on the street in Washington and tried to prevail upon her to consent to said sale, which she positively declined to do, and again tried to impress him with the fact that she would never consent to any sale of said property; that subsequently she learned the sale was rescinded.

ALICE TYLER.

Subscribed and sworn to before me this 28th day of March, 1888.
JASPER M. BERRY, JR.,
[SEAL.] *Notary Public.*

87 *Affidavit of Nannie Raleigh. Filed Apr.* 7, 1888.

At the same time personally appeared Mrs. Nannie Raleigh, who, by me being first duly sworn, on her oath says that during the

month of November, 1886, she, at the instance of her mother, Mrs. Susan W. Edwards, went to Washington, D. C., to try to stop the sale of the property 511 F street N. W., Washington, D. C., and in company with Alice Tyler and Mrs. Gibbs went to see Mess. J. H. Gray and Co., real-estate ag'ts, through whom said property was reported to have been sold, Mr. Jas. B. Green, the trustee, then being in California, and was referred to Mr. Ballinger, of said firm, whom she saw and tried to get him to rescind the sale, stating most positively to him that the heirs did not want the property sold then or at any future time, as it was intended by her grandmother that it should be a permanent trust; that she had refused ten thousand dollars for it and wanted the heirs to be benefitted in the future; that she told said Ballinger that the heirs would oppose by all means possible said sale or any future efforts to sell said property; that one of said firm stated that they were sorry they had anything to do with it, and if they had understood it as she had stated they would not have had anything to do with it, but did not see how
88 they could then get out of it; that she further stated that Mr. Green had promised not to sell said property without full consent of the heirs; that subsequently the sale was rescinded.

NANNIE RALEIGH.

Subscribed and sworn to before me this 28th day of March, 1888.

[SEAL.] JASPER M. BERRY, JR.,
Notary Public.

STATE OF MARYLAND, *Baltimore City,* } *sct:*

I hereby certify that Jasper M. Berry, Jr., Esquire, before whom the annexed affidavits were made and who has thereto subscribed his name, was at the time of so doing a notary public of the State of Maryland, in and for the city of Baltimore, duly commissioned and sworn, and that to all acts done by him in that capacity full faith and credit are due and ought to be given, and that I am well acquainted with his handwriting and believe that his signature thereto is genuine.

In testimony whereof I hereto set my hand and affix
[SEAL] the seal of the superior court of Baltimore city this 31st day of March, A. D. 1888.

JAS. BOND,
Clerk of the Superior Court of Baltimore City.

89 *Affidavit of A. T. Britton. Filed Apr.* 17, 1888.

Supreme Court of the District of Columbia.

SUSAN W. EDWARDS *vs.* CHAPMAN MAUPIN. } Equity, No. 7907.

DISTRICT OF COLUMBIA, *City of Washington,* } *ss:*

I, A. T. Britton, being duly sworn, depose and say that I am of

lawful age; that I am a counsellor-at-law, of the firm of Britton & Gray, No. 622 F street, Washington; that I am interested in building the new office building, to be called the "Atlantic," on F street above 9th; that I also am one of the owners of the Pacific building, for offices, at 622 F street, and that I know something of the value of land on F street for this purpose; that I know this lot of land at 511 F street, owned by J. B. Green, trustee; that I regard its value, from its situation, as chiefly that for an office building. The lot itself is, however, too small to be used alone for that purpose. A building should have good width and depth, with an elevator. That I think nearly four dollars a foot is a handsome price for that lot and all it is worth; that I have twice declined to purchase said lot when offered to me at a less price.

90 A. T. BRITTON.

Subscribed and sworn to before me this twelfth day of April, 1888.

ROBINSON WHITE,
Notary Public.

91 *Order Overruling Prayer of Petition. Filed May* 2, 1888.

In the Supreme Court of the District of Columbia.

(Filed May 2, 1888. R. J. Meigs, clerk.)

SUSAN W. EDWARDS *et al.*
vs.
CHAPMAN MAUPIN. } Equity, 7908.

Order overruling prayer of petition.

This cause coming on to be heard on the petition of Susan W. Edwards and Alice Tyler for the vacation of the order of March 7th, 1888, ratifying and confirming the sale by the trustee, James B. Green, and for the removal of said trustee, and on the answer of said James B. Green, trustee, and having been fully argued, it is this 2d day of May, 1888, adjudged, ordered, and decreed that the prayers of said petition be, and the same hereby are, denied; from which order of the court the petitioners, Susan W. Edwards and Alice Tyler, pray and appeal to the court in general term, which is allowed, conditioned upon the filing in this court by the said petitioners of a bond in the sum of fifty dollars.

W. S. COX, *J.*

92 *Petition for Order on Trustee, &c. Filed Jul-* 5, 1888.

In the Supreme Court of the District of Columbia.

SUSAN W. EDWARDS *et al.*
vs.
CHAPMAN MAUPIN. } Equity, 7907.

Your petitioners, Susan W. Edwards and Alice Tyler, respectfully

show that notwithstanding the decree of this court of March 23d, 1888, directing James B. Green, trustee, to pay into the registry of the court all money, bonds, and securities in his hands as trustee for your petitioners, and notwithstanding the further order of this court of May 23d, 1888, directing the interest upon bond No. 67 of the city of Richmond, Virginia (in which bond a portion of the trust fund was invested), to be paid to the said Susan W. Edwards and Alice Tyler or to their duly authorized attorney and not to said James B. Green, trustee; and notwithstanding a copy of said last-mentioned decree was duly lodged with the auditor of the city of Richmond, Virginia, and that Wyndham Meredith, Esq. (and no other), was duly constituted the attorney of your petitioners for said purpose, yet that it appears from the letter of their said attorney, which is filed herewith, marked Exhibit A, and prayed
93 to be taken as a part hereof, that the said James B. Green has anticipated and appropriated the whole of said interest to himself, and in defiance of the rights of your petitioners, and in contempt of the orders of this court has paid over the same to a broker of the city of Richmond.

Wherefore your petitioners pray that the said James B. Green be ordered to forthwith pay the whole of said interest, to wit, $150.00, into the registry of this court.

HENRY W. GARNETT,
LEIGH ROBINSON,
Solicitors for Petitioners.

EXHIBIT A. Filed Jul- 5, 1888.

Wyndham R. Meredith, attorney-at-law, cor. 10th and Bank streets,

RICHMOND, VA., *July 3rd*, 1888.

Leigh Robinson, Esq., Washington, D. C.

DEAR MR. ROBINSON: I called for the interest this morning and found it collected by Warren and Quarles, brokers, of this city, on acc't of James B. Green, Jr. I called on them, and Mr. Quarles informed me that he had let Mr. Green have the money some
94 time in June and had taken his order, which he cashed on yesterday. You wrote me that you wished the money collected as early as possible. I supposed that this meant that your clients were poor and wished the money to be paid at once. If I had had any idea that there was another claimant I should have been on hand promptly. As it was, some clients of mine have just bought a railroad, and I am and have been as busy as I could be in relation to their affairs.

At the time Quarles collected the check on Green's order the decree and the power of attorney had been deposited by me with the city auditor, and I had asked that they would have everything ready for me when I called, on which they promised to do. I give you these facts in case you may try to hold the auditor or city liable.

Mr. Green's address is ——.

Next page.

95 *Order to Clerk to Pay out Money in the Registry of the Court. Filed Jul-* 23, 1888.

In the Supreme Court of the District of Columbia.

SUSAN W. EDWARDS *et al.*
vs.
CHAPMAN MAUPIN. } Equity, 7907.

On motion of the solicitors for complainants the clerk is hereby ordered to pay out the sum of $4,921.92, now in the registry of this court, in the above-entitled cause for investment in secured notes for $4,918 and 3½ months' interest thereon, to wit, 2 notes for $2,459 each, bearing date April 5th, 1888, and payable, respectively, one and two years after date, and secured by deed of trust on north 16 feet 8 inches of original lot 19, square 290, the notes to be held by the clerk subject to future order.

E. F. BINGHAM,
Chief Justice.

July 21st, 1888.

96 *Proceedings in General Term, Oct.* 29, 1888.

In the Supreme Court of the District of Columbia, Sitting in General Term.

(Filed Oct. 29, 1888. R. J. Meigs, clerk.)

SUSAN W. EDWARDS *et al.*
vs.
CHAPMAN MAUPIN. } Equity, 7907.

Your petitioners, Susan W. Edwards and Alice Tyler, respectfully show—

That, as appears from the record filed herein, James B. Green, the trustee appointed by this court for your petitioners on the 3d day of March, 1888, undertook to sell and on March 7th, 1888, obtained the confirmation of a sale of the real estate in the city of Washington, D. C., held by him in trust under said appointment for the price of $11,000.00; that, as appears further from the same record, the said James B. Green, trustee, in order to obtain the confirmation aforesaid, made oath that the sale referred to was fairly made, notwithstanding the fact, which also appears, that said sale was in violation of the wishes and instructions of his *cestuis que trustent*, the true owners of the property, and effected by the concealment from them of a negotiation which, if known to them, they would have interfered to prevent.

97 Your petitioners further show that on the 23d day of March, 1888, the court in special term "ordered that the trustee, James B. Green, pay into the registry of this court all the fund now in his hands as trustee in this cause, of every and all description, on

or before the 28th day of March, A. D. 1888;" that this order was gratified in part for the first time on the 7th day of April, 1888, by the deposit in the registry of this court of a bond in the city of Richmond, Va., of the par value of $5,000.00, and again, on the 21st day of the same month and year, by the payment into the registry of this court of the sum of $4,921.92, in all, $9,921.92, since which last-mentioned date no further payment has been made, and therefore of the sum of $11,000.00, the price of said real estate so sold as aforesaid, $1,078.08 remains unaccounted for and unpaid into the registry of this court, as required by said order of March 23d, 1888.

Your complainants further show that, in assurance and confirmation of the order of March 23d, 1888, aforesaid, an order was made on the 23d day of May, 1888, providing for the collection of interest on the city of Richmond bond by the duly constituted attorney of the complainants and prohibiting the collection thereof by the said James B. Green; that thereafter, as shown by the petition filed in this cause July 5th, 1888, notwithstanding the fact that a copy of said decree of May 23d, 1888, was duly lodged with the auditor of the city of Richmond, together with a power of attorney to Wyndham R. Meredith, Esq., from your petitioners to draw the interest on said bonds prior to July 2d, 1888, when the same was payable, nevertheless, on July 3d, when the said Meredith called, as appears from his letter filed with said petition, it appeared that he had been anticipated by said James B. Green, who had appropriated the whole of said interest to himself and paid the same over in settlement of his own indebtedness previously incurred to two brokers of the city of Richmond, and that upon the hearing of this pe-
98 tition it was, upon the 5th day of July, 1888, "adjudged, ordered, and decreed that the said James B. Green, trustee as aforesaid, forthwith pay into the registry of this court the whole of the interest upon said bond No. 67, accrued and payable on July 2d, 1888.

Your petitioners further show that this order of July 5th has never been complied with, and that the only recognition thereof is a motion of the said James B. Green, filed in this cause on August 24th, 1888, for the vacation of said order, for the reason that the same and all the other orders passed in this cause are in derogation of the rights of said Green and beyond the jurisdiction of this court, which motion of said Green has never been called to the attention of the court in any way whatever, and was discovered and made known to the counsel of your petitioners for the first time when they prepared the record in this cause for submission to your honorable court, so that it would appear that the said Green has considered the mere filing of this motion a sufficient compliance with the order of court of July 5th, 1888.

Your petitioners further state that the sale of their property so made without their authority as aforesaid was confirmed on March 7th, 1888; that with the exception of the $9,921 paid by compulsion into the registry of this court as aforesaid they have had no account from the said Green whatsoever; that a balance of $1,078.08 on the alleged price of said property remains to be accounted for

by him, as well as $125, five per cent. interest for six months on said bond of the city of Richmond, Virginia, so collected and retained by said Green, as stated herein, and that since said date of March 7th, 1888, your petitioners have not nor has either of them received one cent from said Green, and they are both in pressing need of the money to which they are entitled, but more especially your petitioner, Susan W. Edwards, whose condition has been rendered necessitous for want of the moderate sum to which they
99 have been accustomed from this source; nor has said Green accounted for three hundred and eighty-three dollars ($383), on which $11 interest was payable in May last, but which said interest has not been paid by said Green to your petitioners, said sum of $383.00 being invested in the Savings Bank of Baltimore or some other institution of a like kind in the city of Baltimore, Maryland; nor has said Green accounted for the rent of the property sold as aforesaid, which was in has hands at the time of said sale, but has never been paid to your petitioners.

Wherefore, for the reasons mentioned in this petition and the affidavits filed in support hereof, in addition to the reasons heretofore submitted to the court in special term, your petitioners pray that the said James B. Green be removed from his trusteeship in this cause and some responsible and competent person be substituted in his stead.

That, in case it shall seem to the court inexpedient for any reason to set aside the sale confirmed by the order of the special term as aforesaid of March 7th, 1888, at least commissions on said sale be denied the said James B. Green because of his flagrant violation of the wishes of his *cestuis que trustent*, suppression of facts, and breach of duty and trust in making said sale and gross misconduct since, and that, in such event, a decree be made for the payment by the said James B. Green of the sum of $1,078.08, with interest, at the rate of 6 per cent., from the 7th day of March, 1888, and the payment of $125.00, with interest thereon, at the rate of 6 per cent., from the 2d day of July, 1888, and for the payment of said sum of $383.00, with interest thereon, and for said rent on the property sold so in his hands as aforesaid, and, in any event, for the payment of such sums as shall seem to this court reasonable and right to reimburse your petitioners for the fees of counsel and other expenses of litigation incurred by reason of the default, disobedience, and unfaithfulness of said James B. Green.

That your petitioners may have such other and further relief as to this honorable court may appear proper to their cause, the premises being considered.

SUSAN W. EDWARDS.

100 *Affidavit of Wyndham R. Meredith. Proceeding in General Term, Oct.* 29, 1888.

In the Supreme Court of the District of Columbia, Sitting in General Term.

(Filed October 29, 1888. R. J. Meigs, clerk.)

SUSAN W. EDWARDS *et al.*
vs.
CHAPMAN MAUPIN. } Equity, 7907.

I, Wyndham R. Meredith, of the city of Richmond, Va., being first duly sworn, make oath and say that on July 3rd, 1888, I called at the office of the auditor of the said city of Richmond to collect the interest on bond No. 67 thereof, when I was informed that said interest had been collected the day before or at an earlier hour on the same day by Warren and Quarles, brokers, of the city of Richmond, Va., on the order of James B. Green, trustee. At the time of the payment on the order of said Green and for some time previous a copy of the decree of the supreme court of the District of Columbia, directing the payment of said interest exclusively to the duly constituted attorney of Susan W. Edwards and Alice Tyler, together with a paper-writing duly constituting this affiant such attorney, had been deposited by me with the auditor, who stated that before I called Mr. Quarles, of the firm of Warren & Quarles, had presented an order from the said Green which antedated, if not the decree, at least the deposit of the decree with him, and that in addition, at the moment of payment, the deposit of court with him had escaped his memory. I also saw Mr. Quarles, of the firm of Warren & Quarles, who stated to me that the said Green had applied to him some time before to advance the money, and that he had let said Green have the money, taking at the time said Green's order on the auditor, which he, the said Quarles, had cashed. I believe that the said Quarles had let the said Green have the money some time before the decree of the supreme court of the District of Columbia had been sent on to me.

WYNDHAM R. MEREDITH.

101 *Affidavit of W. R. Quarles. Filed Oct.* 29, 1888.

In the Supreme Court of the District of Columbia, Sitting in General Term.

(Filed October 29, 1888. R. J. Meigs, clerk.)

SUSAN W. EDWARDS *et al.*
vs.
CHAPMAN MAUPIN. } Equity, 7907.

Affidavit of W. R. Quarles.

I, W. R. Quarles, of the firm of Warren & Quarles, of the city of

Richmond, Virginia, being first duly sworn, make oath and say that the order of James B. Green, trustee, on the auditor of said city of Richmond, Virginia, for the payment of interest on bond No. 67 of said city, cashed by me on the 2d day of July, 1888, was given to me in payment of the indebtedness of said James B. Green, the same having been incurred by reason of the advancement of money by me to said Green some time in the preceding month of June. Affiant further states that said order was cashed by his firm on the 15th day of June, 188–, and a check for $125 was given by him to the said Green on said 15th day of June.

Given under my hand this 19th day of October, 1888.

W. R. QUARLES.

Order. Filed May 23, 1888.

In the Supreme Court of the District of Columbia.

(Filed May 23, 1888. R. J. Meigs, clerk.)

SUSAN W. EDWARDS and ALICE TYLER, Complainants, *vs.* CHAPMAN MAUPIN, Defendant. } Equity, No. 7907.

It appearing to the court that James B. Green, trustee, has, in pursuance of the order of this court, deposited in its registry one five-thousand-dollar ($5,000.00) bond of the city of Richmond, Virginia, numbered 67, and standing in the name of said
102 James B. Green, trustee, and also the sum of $4,921.92 in cash, it is, this 23rd day of May, A. D. 1888, on the motion of complainants, by their counsel, hereby ordered that the said sum of $4,921.92 in cash be invested forthwith by the clerk of this court in notes secured upon real estate in this District, and that the interest accruing upon said bond No. 67 of the city of Richmond, Virginia, until the further order of this court be paid the said Susan W. Edwards and Alice Tyler, complainants herein, or to their duly authorized attorney, and not to the said James B. Green.

W. S. COX, *J.*

Order. Filed July 5, 1888.

In the Supreme Court of the District of Columbia.

(Filed July 5, 1888. R. J. Meigs, clerk.)

SUSAN W. EDWARDS *et al.* *vs.* CHAPMAN MAUPIN. } Equity, 7907.

It appearing to the court from the petition of Susan W. Edwards and Alice Tyler, this day filed, that, notwithstanding the order of

this court of March 23d, 1888, directing James B. Green, trustee, to pay into the registry of this court all money, bonds, and securities in his hands belonging to the trust then held by him for petitioners under the decree of this court in this cause, and in disregard of the further order of this court of May 23d, 1888, directing the interest upon bond No. 67 of the city of Richmond, Virginia (comprising a part of the said trust fund), to be paid to the said Susan W. Edwards and Alice Tyler or to their duly authorized attorney, and not to said James B. Green, a copy of which order of May 23d, 1888, together with a power of attorney to Wyndham Meredith, Esq., to collect the said interest upon bond No. 67 (and to him only), was duly lodged with the auditor of the city of Richmond, Virginia, the said James B. Green has himself collected the
103 interest upon said bond and paid the same over not to the said Susan W. Edwards and Alice Tyler, but to brokers of the city of Richmond, Va., from whom he had previously borrowed the amount thereof, upon consideration thereof it is, this 5th day of July, 1888, adjudged, ordered, and decreed that the said James B. Green, trustee as aforesaid, forthwith pay into the registry of this court the whole of the interest upon said bond No. 67 accrued and payable on July 2d, 1888.

W. S. COX, *J.*

Motion of J. B. Green to Rescind, &c.

In the Supreme Court of the District of Columbia.

SUSAN W. EDWARDS *et al.* *vs.* CHAPMAN MAUPIN. } Equity, No. 7907.

And now comes the respondent, James B. Green, trustee, and moves the court to rescind the order passed in this cause on the 5th day of July, 1888, directing the said James B. Green, trustee, to pay into the registry of the court the interest on bond No. 67 of the city of Richmond, Virginia, for that the said order was improvidently granted, without due notice to the respondent and upon the false and erroneous representations of the petitioners, as more fully and at large will appear by the affidavit, which is filed herewith and marked Exhibit "A" and prayed be taken as part hereof.

LINDEN KENT,
Attorney for James B. Green, Trustee, Respondent.

EXHIBIT "A."

Affidavit of James B. Green, Trustee.

SUSAN W. EDWARDS *et al.* *vs.* CHAPMAN MAUPIN. } Equity, No. 7907.

James B. Green, being first duly sworn, says that the re-
104 citals in the decretal order entered in this cause July 5, 1888,

are erroneous; that he had not seen and did not know of the order of 23d May, 1888, directing him to pay the interest on bond 67 of the city of Richmond to Susan W. Edwards and Alice Tyler or their duly authorized attorney prior to his collection of the interest on said bond; that said order was in derogation of all the rights of him, the said James B. Green, and was beyond the jurisdiction of the supreme court of the District of Columbia; that the interest on the said bond of the city of Richmond, No. 67, was drawn by this affiant and deposited in a bank of the city of Richmond, Va., for the purpose of answering costs that might accrue in this cause for the pending proceeding. The petitioners are life tenants, and it does not occur to the affiant that the *corpus* of the trust estate should be charged with the costs of this suit; and, further, this affiant, in absence of notice of the said order of May 23, 1888, was the only person whom the authorities of Richmond, Va., could recognize as entitled to draw the interest on said bond No. 67; and, further, that this affiant intended and has always intended to benefit the estate in his hands, and that his conduct could not by any possibility be construed into a defiance of the order of this honorable court.

And, further, this affiant says that the suggestion that the drawing of said interest on said bond was for the payment of his personal obligations is erroneous and false, and he further says that the order of March 23d, 1888, to bring into court the estate of every kind and description pertaining to the trust was consented to by his then attorney without any authority and against the specific instructions of this affiant, and, having been passed, this affiant thought it best to comply therewith.

Given under my hand this 30th day of July, 1888.

JAMES B. GREEN, *Trustee, &c.*

CITY OF WASHINGTON, *To wit:*

Personally appeared before me, a notary public of the said city, in the District of Columbia, James B. Green, and made oath that the above affidavit is true.

Given under my hand and notarial seal this 30th day of July, 1888.

JOHN E. BEALL,
Notary Public.

105 *Petition of A. M. Kenaday for Dismissal of Appeal, &c. Filed Nov. 23d, 1888.*

In the Supreme Court of the District of Columbia, in General Term. October Term, 1888.

SUSAN W. EDWARDS *et al.*
vs.
CHAPMAN MAUPIN. } Equity, No. 7907. Cal'r No. —.

The petition of Alexander M. Kenaday humbly shows unto your honors—

That he is the purchaser of the part of lot 2, in square 487, in these proceedings mentioned, having purchased the same for the sum of eleven thousand dollars cash from James B. Green, the trustee appointed in this cause by the decree of this honorable court, passed on the 29th day of March, 1882.

That your petitioner dealt in entire good faith with the
106 said trustee, who had filed the original bill in this cause, and was the solicitor of record for the complainants, and that he had no knowledge, notice, or intimation that the said trustee or his conduct was in any way objectionable to the complainants, and your petitioner paid to the said trustee the sum of eleven thousand dollars in cash for the property aforesaid, and the sale to your petitioner was finally ratified and confirmed by the decree of this honorable court, at special term, passed on the 7th day of March, 1888.

Thereafter, on the 17th day of March, 1888, your petitioner was served with a rule, issued on the petition of complainants, to show cause why the order ratifying and confirming said sale to your petitioner should not be vacated and set aside as having been improvidently passed, and the sale so ratified vacated and set aside, and why the trustee should not be removed.

Your petitioner attended to the said proceeding sufficiently to learn that the prayers of the petition were denied by this honorable court, at special term, on the 17th day of May, 1888, and that the ratification of the sale remained in full force and vigor, and,
107 as matter of fact, your petitioner was under the impression that all question- affecting him or his rights was at an end, and he did not know, as matter of fact, that the validity of the sale to your petitioner would be in anywise questioned in this honorable court in general term, but believed, as matter of fact, that complainants were wholly concerned in the removal of the trustee and the control of the $11,000 paid by your petitioner in good faith to said trustee, and it was not until the decision of this case on Monday last, the 19th of November, that your petitioner learned that the validity of the sale to him was supposed to be in question. Your petitioner thereupon, being greatly alarmed at the possible legal consequences of his misapprehension of the scope and nature of complainants' contentions on appeal, forthwith consulted counsel, and he is now advised that the order of the court at special term, ratifying and confirming the sale to him, passed on March 7th, 1888, stands unreversed, that there has been no appeal from said order, and that the same remains in full force and vigor; that complainants' appeal, as to that part taken from the refusal of the court below to reopen the order passed on March 7th, 1884, is wholly
108 inoperative, the said refusal having been made in the discretion of the justice holding the special term, and not being a final decree or order from which an appeal can be taken, the Supreme Court of the United States having more than once decided in District of Columbia cases that an appeal will not lie from the refusal of a court to reopen a former decree.

Your petitioner further shows that the only appeal taken by complainants was that allowed in open court on the passing of the order

denying the prayers of the petition and contained in said order, and in the brief of counsel for appellants before this honorable court it is stated, on page 8, that "the prayers of the petition were overruled by the court, and from the order overruling the same the petitioners appealed to this court."

Your petitioner fears that his own conduct may have left upon the minds of the court the impression that the setting aside of the sale was a matter of indifference to him, and that he might be willing to consent to such proceedings in special term as would undo what has been done; but such is not the case, your petitioner having erred through misapprehension and ignorance in not sooner
109 making known his true position to the court; and, as your petitioner is now advised that his position in law with reference to this sale is exactly what he believed it to be in fact, he cannot doubt that this honorable court will so frame any decree to be entered in this cause as to protect the rights of your petitioner.

Wherefore and by reason of the premises your petitioner prays your honorable court to provide in its decree herein for the dismissal of the complainants' appeal as to that part taken from the refusal of the court below to set aside and vacate the order of March 7th, 1888, finally ratifying and confirming the sale to your petitioner, for want of jurisdiction, the said refusal having been made in the discretion of the court below and not being a final decree or order from which a decree can be taken.

And your petitioner will ever pray, &c., &c.

ALEXANDER M. KENADAY.

CALDERON CARLISLE,
Solicitor for Petitioner Kenaday.

I have read the foregoing petition by me subscribed and know the contents thereof, and the matters therein stated of my
110 own knowledge are true, and the matters stated on information and belief I believe to be true.

ALEXANDER M. KENADAY.

Subscribed and sworn to before me this 23d day of November, A. D. 1888.

OSCAR LUCKETT,
[SEAL.] *Notary Public.*

111 *Notice of Filing of Petition of A. M. Kenaday, &c., and Service Accepted by Compl'ts' Solicitor. Filed Nov.* 26, 1888.

In the Supreme Court of the District of Columbia. In General Term.

SUSAN W. EDWARDS *et al.*
vs.
CHAPMAN MAUPIN. } In Equity. No. 7907.

To Henry W. Garnett and Leigh Robinson, solicitors for complainants and appellants:

Please take notice that I have this day filed the petition of Alex-

ander M. Kenaday, a copy of which is herewith —, and that the same will be brought to the attention of the court on Monday next, the 26th day of November, 1888, at ten o'clock a. m., or as soon thereafter as counsel can be heard, and before the entering of any decree herein.

CALDERON CARLISLE,
Solicitor for Petitioner Kenaday.

Nov. 23d, 1888.

Service of copy of above notice and petition mentioned in same acknowledged this 23d day of November, A. D. 1888.

HENRY WISE GARNETT,
Sol'r for Compl'ts and Appellants.

112 *Decree, Gen. Term. Passed Dec.* 4, 1888.

In the Supreme Court of the District of Columbia, Holding a General Term.

SUSAN W. EDWARDS *et al.*
vs.
CHAPMAN MAUPIN, Trustee. } In Equity. 7907.

This cause coming on to be heard on appeal from the special term and having been fully argued by counsel, it is, this 4th day of December, A. D. eighteen hundred and eighty-eight (1888), by the court adjudged, ordered, and decreed that the order of the equity court of May second, 2d, A. D. eighteen hundred and eighty-eight (1888), overruling the prayers of the petition be, and the same is hereby, reversed; that the order of said equity court of March seventh, 7th, A. D. eighteen hundred and eighty-eight (1888), passed by said equity court, on the report of the trustee, James B. Green, confirming the sale reported by him, be, and the same hereby is, set aside and for nothing held and the said sale vacated, and that the said James B. Green be, and he hereby is, removed from his office of trustee and denied commissions as trustee, and be decreed, and hereby is decreed, to pay the costs of this appeal, to be taxed by the clerk; and, further, that he pay into the registry of this court
113 in full the sum received by him as the price of the property referred to in his report of March seventh, 7th, A. D. eighteen hundred and eighty-eight (1888), the sale of which is hereby vacated, and any and all other money, stock, certificates of deposit, and evidences of indebtedness received or held by him as trustee under his appointment in this cause, and this cause is hereby remanded to the court in special term to ascertain the amount to be paid in by said Green and to appoint a trustee in his place; and it is further ordered that the petition for modification of the foregoing decree by Alexander M. Kenaday be dismissed with costs.

E. F. BINGHAM,
Chief Justice.

From so much of said decree as sets aside the sale and vacates the order of March 7th, 1888, the purchaser, Alexander M. Kenaday, by

his counsel, Calderon Carlisle, prays in open court an appeal to the Supreme Court of the United States, which is accordingly allowed, to operate as a supersedeas, upon the filing of a bond with good and sufficient sureties, to be approved by the court, in the sum of $5,000, conditioned according to law.

E. F. BINGHAM,
Chief Justice.

114 *Order Granting Appeal to Sup. C't U. S. and Fixing Amount of Bond. Filed Jan.* 18, 1889.

In the Supreme Court of the District of Columbia.

S. W. EDWARDS *et al.*
vs.
CHAPMAN MAUPIN. } In Equity. 7907.

Now comes James B. Green, trustee, by his attorney, C. G. Lee, and in open court prayers an appeal to the Supreme Court of the United States from the decree of this court entered December 4th, 1888, which is accordingly allowed, to operate as a supersedeas, upon filing of a bond, with good and sufficient sureties, to be approved by the court, in the sum of five thousand dollars, conditioned according to law.

E. F. BINGHAM,
Chief Justice.

115 Filed Dec. 13, 1888.

In the Supreme Court of the District of Columbia, the 12th day of December, 1888.

SUSAN W. EDWARDS and ALICE TYLER
vs.
CHAPMAN MAUPIN, Trustee. } No. 7907, Equity.

Know all men by these presents that we, Alexander M. Kenaday, William H. Clagett, and Arthur St. C. Denver, all of the District of Columbia, are bound unto the above-named Susan W. Edwards and Alice Tyler in the sum of five thousand (5,000) dollars, to be paid to the said Susan W. Edwards and Alice Tyler, their executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 12th day of December, 1888.

Whereas the above-named Alexander M. Kenaday has prosecuted an appeal to the Supreme Court of the United States to reverse so much of the decree rendered in the above suit by the said supreme court of the District of Columbia on December 4, 1888, as sets aside the sale and vacates the order of March 7, 1888:

Now, therefore, the condition of this obligation is that if the above-named Alexander M. Kenaday shall prosecute his said appeal to effect and answer all damages and costs if he shall fail to make good

his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

ALEX. M. KENADAY. [SEAL.]
WILLIAM H. CLAGETT. [SEAL.]
ARTHUR ST. C. DENVER. [SEAL.]

Sealed and delivered in presence of—
MAMIE DU HAMEL CLAGETT,
ADELE CLAGETT.

116 Filed Jan. 25, 1889.

In the Supreme Court of the District of Columbia, the 18th day of January, 1889.

SUSAN W. EDWARDS *et al.*
vs.
CHAPMAN MAUPIN, Trustee. } No. 7907. In Error.

Know all men by these presents that we, James B. Green and Mareen D. Humes, are bound unto the above-named Susan W. Edwards and Alice Tyler in the sum of five thousand dollars, to be paid to the said Susan W. Edwards and Alice Tyler, their executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 18th day of January, 1889.

Whereas the above-named James B. Green has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is that if the above-named James B. Green shall prosecute his said appeal to effect and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JAMES B. GREEN.
MAREEN D. HUMES. [SEAL.]

Sealed and delivered in presence of—
R. A. THURMAN,
F. H. McGUIRE,
Witnesses as to Jas. B. Green.
C. G. LEE,
RUTLEDGE WILLSON,
As to M. D. Humes.

Endorsed on cover: Dist. of Columbia supreme court. No. 1236. Alexander M. Kenaday, appellant, *vs.* Susan W. Edwards and Alice Tyler; and, No. 1237, James B. Green, trustee, appellant, *vs.* Susan W. Edwards and Alice Tyler. Filed September 23, 1889.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1889.

No. 1237.

JAMES B. GREEN, TRUSTEE, APPELLANT,

vs.

SUSAN W. EDWARDS AND ALICE TYLER, APPELLEES.

MOTION TO DISMISS AND TO AFFIRM.

And now come the appellees and, by their solicitors, move the Court to dismiss the appeal in this cause for the reason that there is not involved in this cause the sum of five thousand dollars, or any amount of property necessary to give this Court jurisdiction.

And also with said motion move the Court to affirm the decree below.

LEIGH ROBINSON,
HENRY WISE GARNETT,
Solicitors for Appellees.

BRIEF IN SUPPORT OF MOTIONS.

The only interest of the appellant in this cause is to retain his position as trustee, and to receive as such the commissions on the sale of eleven thousand dollars' worth of property.

On the 29th of March, 1882, the appellant was, by the decree of the supreme court of the District of Columbia, holding a special term in equity, in a proceeding instituted by the appellees, substituted as trustee under a will, in which trust the appellees were beneficiaries.

On March 7, 1888, the trustee filed a report to the supreme court of the District of Columbia, holding a special term in equity, of the sale of the property; which court on the same day passed an order confirming said sale.

On the 17th day of March, 1888, the beneficiaries under said will filed their petition in the said equity court, stating, among other things, that said trustee had no power to make said sale; that it had been made without their knowledge and against their wishes, and praying to have said sale set aside and said trustee romoved.

On the same day (March 17, 1888) the said equity court issued a rule on the appellant, Green, trustee, and Kenaday, the purchaser, to show cause why the order confirming the sale should not be set aside as improvidently passed and the said sale vacated and set aside, and also why said Green should not be removed from the office of trustee.

On March 23, 1888, the said court passed an order requiring the trustee, Green, to pay into court all the fund received by him from the sale of the lot.

Under this order Green, trustee, paid into court $4,921.92 in cash and a Richmond, Va., city bond for $5,000.00, which bond being above par, the sum paid into court amounted to over $10,000.00.

The rule was duly served on the appellant, Green, and said Kenaday.

On March 29, 1888, the appellant, Green, trustee, filed in said court an answer to said rule stating, among other things, that he had power to make said sale; that it was made in good faith, for full value, and was properly confirmed, and that he has faithfully performed his duties as trustee, but would retire from the trusteeship if paid for his services.

On May 2, 1888, the equity court passed an order overruling the prayer of the petition of the beneficiaries under the will. From this order the beneficiaries, who are the appellees in this cause, appealed to the supreme court of the District of Columbia, holding a general term.

On December 4, 1888, the general term passed a decree which reversed the order of March 7, 1888, of the equity court, which set aside the sale made by Green, trustee, removed him from his office of trustee, and ordered him to pay into court the full amount received by him from the sale of the property.

See Record, p. 60.

From this decree the appellant, Green, trustee, appealed to this Court.

It is clear that the only interest he has is the commissions on the price of the purchase-money, which are not of sufficient amount to give jurisdiction to this Court.

LEIGH ROBINSON,
HENRY WISE GARNETT,
Solicitors for Appellees.

SUPREME COURT OF UNITED STATES.

October Term, 1889.

No. 1236.

ALEXANDER M. KENADAY, *Appellant*

vs.

SUSAN W. EDWARDS and ALICE TYLER,

Appellees.

Brief and Argument for Appellant.

GEORGE F. APPLEBY,
CALDERON CARLISLE,
Counsel.

R. O. Polkinhorn, Printer.

Supreme Court of the United States.

October Term, 1889.

ALEXANDER M. KENADAY,
Appellants,

vs.

SUSAN W. EDWARDS AND ALICE TYLER.
Appellees.

No. 1236.

Appellant's Brief.

Statement.

This appellant, A. M. Kenaday, was the innocent purchaser for full value, *bona fide* paid, of certain property in the city of Washington of which the vendor was one James B. Green, trustee under the will of Mary E. Macpherson, deceased, of Baltimore, Md. On the petition of two certain *cestuis que trustent* under the said will—filed to have vacated, not the sale but an order of Judge Cox, holding Special Term, approving the sale, and to have the trustee removed for exercising his power of sale under the said will without their directions, the Special Term passed an

order denying the prayers of the petition, whereupon they appealed from said order letting the order approving the sale stand unappealed, and obtained from the General Term a decree purporting to vacate the sale without the purchaser having been cited to show cause before the court in General Term, and without attempting in any wise to secure to the purchaser a repayment of the purchase-money. From this decree the purchaser brings this appeal. The petition of the said *cestuis que trustent*, who are the appellees here, does not pray any process against this appellant and does not even mention his name.

It appears that the testratrix, Mary E. Macpherson, devised the property in dispute to trustees in fee simple upon certain trusts, among others to manage and control the same and to take the rents, profits and income thence arising, and to pay one-half of the net amount received from such rents, profits and income to her daughter, Susan W. Edwards, for and during her natural life, * * * * (Printed Rec., p. 4). (one of the appellees) and as to the remaining moiety of the net rents, profits and income arising from the said real estate devised to her trustees, to pay the same to the sole and separate use of her great-granddaughter, Alice Tyler, for and during her natural life, * * * (Rec., p. 5) (the other of the appelles.) On looking at the will to ascertain who are the trustees indicated to hold the estate we find that it is to be held by Chapman Maupin and Robert W. Maupin, of the State of Virginia, and the survivor of them and by *such person* or persons as may be appointed to execute *the trusts* declared by this her will, by the last will and testament of such survivor, or by other instrument of writing (the Printed Record, p. 4 says

instrument or writing), executed for that purpose *by such survivor*.

It is clear from this that any assignee of the survivor of the two trustees named appointed to execute the trusts of the will, is a devisee under her will of the estate to execute the trusts of the will as by her declared, that is to say, is a trustee under her will to manage and control the property devised, to take the rents and has and ought to have all the powers incident to the execution of the trust.

On looking further at the will, we find in the 9th paragraph (Rec., p. 6) that the testatrix devises and bequeaths all her other property to Chapman Maupin and Robert W. Maupin, *and* the *survivor* of them, *and* such *person* or persons as may be appointed to execute the trusts of this her will, by the last will and testament of such survivor or by *other instrument* of writing executed for that purpose by such *survivor*, —to all such—in TRUST to hold the same for the purposes and trusts declared in prior clauses of her will (as above stated,) and she, *by her will*, confers upon the said trustees of her will, *i. e.*, upon the persons to whom she has devised her property in trust, full power and authority to sell or, to use her own language, which is stronger, "I do hereby confer upon my "said trustees full power and authority, at *his* or "their discretion, from time to time to sell by public "or private sale, and to convey to the purchaser or "purchasers all or *any* part of the *trust property in* "*this will devised* and bequeathed to my said trustees, "and to receive, grant, acquittance for and reinvest "the proceeds of such sales; and I do expressly re- "lieve purchasers of such property from the obliga- "tion to see to the application of the purchase "money."

Now, in this case, it appears that the testatrix, Mary E. Macpherson, died in 1873, and that her said will was admitted to probate in Baltimore, Md. (Printed Rec., p. 2); that Chapman Maupin and Robert W. Maupin accepted the trusts (Printed Rec., p. 9); that Robert W. Maupin died in October, 1876, leaving the said Chapman Maupin sole surviving trustee (Printed Rec., pp. 2 and 9; that by a deed dated February 27th, 1888, duly executed and recorded, Chapman Maupin granted and assigned, as surviving trustee, all his right title and estate in and to all the property, real and personal devised and bequeathed to him by the last will and testament of Mary E. Macpherson, deceased, to James B. Green, of Richmond, Virginia, in trust for the uses and purposes set out in said will, and coupled with all the powers. thereby conferred on the trustees (Printed Rec., p. 42), and that James B. Green, as trustee, sold the real estate in Washington—being part of lot 2, in square 487 (Printed Rec., p. 58)—to Alexander M. Kenaday, the appellant, for the price of eleven thousand dollars; that the said Green, trustee, received the same in cash in March, 1888, and although not required by the will under which he was acting as trustee, nor by any decree of court, to report the sale so made to the court or to any *cestuis que trust*, reported the same to the court in equity, stating, in his report, that, while believing that his powers under the last will and testament of Mary E. Macpherson, deceased, are sufficient to enable him to execute a valid deed to the purchaser, he was not willing to take such action without the approval of the court (Printed Rec. p. 20), and he obtained the court's approval by its order on the 7th day of March, 1888, ratifying and con-

firming the said sale (See Printed Rec., p. 21). The record does not give the deed made to the purchaser, but as the trustee wanted the court's approval in order to make the deed, and as a purchaser does not ordinarily pay his purchase money in full without obtaining a deed, and as the trustee being blind is shown to have called to his assistance a friend to count the money and to examine the papers prepared by the Columbia Title Company for him, the trustee, to execute (Printed Rec., p. 35), and as the Columbia Title Company had given the purchaser an abstract and certificate of title, to the effect that the title was vested in James B. Green, trustee, and that the said Green had power to sell the same (Printed Rec. p. 33), for which abstract the purchaser had paid, it is reasonable to assume, in absence of the fact appearing on the record, that upon the ratification of the sale by the court and the receipt in full of the purchase money, the trustee duly conveyed the property to the purchaser. Were it a sale under the decree of the court, as the general term erroneously supposed, no such deed from the trustee was necessary to vest the title in the purchaser, because, by the act of Congress passed in 1867, and incorporated into the Revised Statutes relating to the District of Columbia, § 793, the decree of the special term confirming the sale, vested the title in the purchaser without any conveyance by the trustee making the sale.

It may be interesting to this court to know that the trustee, James B. Green, was substituted by Chapman Maupin in his place and stead, as a trustee under the will of Mary E. Macpherson, because the *cestuis que trustent*, the appellees here, desired the said Green to be trustee. They filed, more than six years before

the sale to this appellant, a bill of complaint in the court below to have Green so substituted as trustee (Rec. p. 2). This *in personam* suit in equity is called by Chapman Maupin "a friendly and consent suit" (Printed Rec. p. 42), and a decree signed by Chief Justice Cartter was therein passed on March 29th, 1882, substituting the said Green as trustee; but this decree omitted to direct the retiring trustee to convey the real estate in dispute to the said James B. Green. In the absence of any statute giving the court authority to decree a divestiture of title in an *in personam* suit, the said decree attempted to divest the fee simple estate from Chapman Maupin, and to vest it in the said Green. In respect thereof the said decree, or rather that part of the decree, being a nullity, the estate and title to the real estate still remained in Chapman Maupin until the execution of his deed to Green in February, 1888 (supra). Had the decree directed a conveyance from the retiring trustee to the substituted trustee, the decree itself would stand as a conveyance (Md. Act of 1785, Ch. LXXII, Sect. XIII), and in that event the retiring trustee might not have had in February, 1888, any title or estate to convey, any deed by the trustee, after such a direction in the decree to convey, being only in conformity therewith and for the sake of form.

It becomes important, however, to notice this decree of 1882, because (1) it recognizes the right of the substituted trustee to sell under the power given by the will by providing that the said Green shall file "before any sale of the said real estate under the powers contained in the said will, a bond in the sum of eight thousand dollars with a surety or sureties to be approved by this court, for the faithful per-

formance of his duty in connection with the said sale;" (2) it was satisfactory to the present appellees, who never appealed therefrom, who never asked its modification in any wise, and who have in their present petition (Printed Rec. p. 28) adopted it as having been duly made, and have requested that it be taken as a part of their petition; and (3) it is based on the consent of Chapman Maupin in his answer contained, and might from that fact derive some efficacy, that is to say, as Chapman Maupin, survivor of Robert, was willing to appoint in his place as trustee, any one desired by the *cestuis que trustent*, and as they desired Green (Rec. p. 10), and as he, Chapman, in his said answer, consented to the passage of a decree as prayed in the bill of complaint, the answer might be taken to be an instrument of writing made by Chapman Maupin, surviving trustee, for the appointment of his successor as by the will of Mary E. Macpherson provided. *Instrumenta*, says Lord Coke, embrace "writings without seale, as court rolles, accounts and the like." Co. Litt, 283 a. This support of the decree, as signed, does not, however, give it any efficacy to pass the title or estate, although it does confirm, so far as all the parties to the suit, including, of course, the *cestuis que trustent*, by whom the suit was brought—are concerned, the right of James B. Green as trustee to sell the real estate in dispute, under the power contained in the will if or when vested with the title and estate. When, at a subsequent date, Chapman Maupin, as surviving trustee, by an instrument of writing to execute the trusts of his testatrix's will, under his hand and seal, conveyed the title and estate in the premises to James B. Green, although in aid of the decree, the

succeeding trustee, James B. Green, obtained the title and estate, not under the decree, but *instanter* as a devisee under the will (*Games* vs. *Stiles*, 14 Pet., 326; *Hanrick* vs. *Neeley*, 10 Wall, 365. Bartons' Maxims of Conveyancing, p. 323, Chap Title), and having as such devisee in trust, the requisite title and estate, must execute the trusts under the powers in the will contained, and this the said decree sanctions, only requiring that the trustee, Green, before exercising the power of sale under the will, should file a bond in the sum of $8,000, with surety or sureties approved by the court. The trustee, Green, filed such bond (Printed Rec., p. 28, Petition of Edwards et al.) This exaction of security by the court as a condition precedent to a sale by Green, trustee, under the powers contained in the will, is not militant against any of the provisions of the will, but is protective thereof, inasmuch as the testatrix in 10 paragraph of her will, makes a request that the joint trustees and executors, Chapman Maupin and Robert E. Maupin, be not required to give security either as executors or trustees, necessarily excluding from her request any other of her trustees, such as the survivor of those two or any assign, of such survivor, because the Maryland law governing her domicile, required such a condition precedent in a sale of real estate by a trustee. The suit in which the decree was made, was brought for the said *cestuis que trustent* by the said Green (then residing in Baltimore, Printed Rec. p. 10), as their lawyer and solicitor of record.

Thus far we have brought to this Court's attention only the decree of March, 1882, passed in that suit and adopted by the petitioners, as being made part

of their petition, but upon looking at their said petition (printed Rec., p. 28) it will be seen that they incorporate therewith and make part thereof the whole record of the suit aforesaid, and upon an inspection of the record as printed from page 1 to page 21 partly inclusive, we find nothing therein which could put a purchaser on inquiry touching any clashing between the trustee and the appellees or any misunderstanding or disagreement. Nothing whatever manifesting any hostility to their chosen trustee by the *cestuis que trustent*, is shown by the record of that suit, although, after filing the bill of complaint therein "for the object and purpose of substituting a trustee in the place and stead of the defendant Chapman Maupin," as they aver in their petition (printed Rec., p. 28), they knew as early as 1884, if not earlier, as appears by the letters of the trustee, filed as exhibits with their present petition and made part thereof, that their trustee so chosen by them and "after due proceedings" "substituted in the place and stead of said Maupin as trustee under the will of the said Mary E. Macpherson," having "duly qualified as trustee, giving bond in the sum of eight thousand dollars and entered upon his duties as trustee, taking charge of the real estate mentioned in said will," (as in their petition averred), was attempting to sell the real estate in the District of Columbia, at private sale, under the power to sell given by the will and sanctioned by the decree, and that he felt it to be his duty to sell the property, whether they wished it sold or not, if he should, by good fortune, get a certain price.

It would have been very easy for them, in order to show on the records their hostility to the trustee, his

alleged insolvency, their desire to have another trustee appointed in his stead to file a petition for the purpose of obtaining a larger bond than $8,000, or, as by their present petition, of having a new trustee appointed if their petition in that suit for that purpose be now proper. They could have filed a new suit for the appointment of another trustee, just as they had filed the aforesaid suit, a practice with which they were familiar. They took no step whatever to prevent a purchaser, innocent in the premises, from being lured into the making of a bid and the parting with money upon the acceptance of his bid.

It was certainly crass negligence on the part of the *cestuis que trustent* to take no such step if they thought after the receipt of the said letters from their trustee, that they had any voice in the matter of a sale under the will or that the trustee was obligated to follow their instructions. Their supineness in this matter, is inexplicable. If the so-called friendly suit against Maupin was considered by them as ended for all purposes, there was no impediment to the bringing of a new suit. They may have considered it as so ended because there was a final decree and because it exacted of the substituted trustee no bond for the rents, the trustee for them being accountable to the Baltimore court's jurisdiction; but this fact did not prevent the institution of a new suit for a new trustee, and if it were so ended then the trustee, Green, under the 49th Rule of practice in Equity of this court, (35 Rule below) having the powers and trusts which the *cestuis que trustent* thought he had and which he claimed to have by virtue of the decree and the will, represented them in this real estate to the same extent as an executor or ad-

ministrator, in matters of personal estate, represent the persons beneficially interested, and it is not necessary to make the persons beneficially interested, parties to any suit, concerning real estate—i. e. Green, trustee, could have brought suit against this appellant to enforce the full payment of the purchase-money and it would be no defense to say that the *cestuis que trustent* were not parties to the suit, or that *they objected* to the sale, and, conversely, the said Green, if made defendant in a suit by the purchaser to convey the property to the purchaser, could not defend on the ground that the *cestuis que trustent* were not parties, for he fully represented them. *E contrario*, if the said suit were not so ended, and if the trustee were obliged by the decree to report the sale to the court, as he did, he was the solicitor of record for these very appellees, and as such could exercise the right of a solicitor to consent in the first instance to a final decree of the ratification of a sale. 2 H. and G., 357.

Viewed in either light the aforementioned supineness cannot be explained away, and if a wrong were done by the trustee in making the sale, we submit that the purchaser should not suffer by reason of the dereliction of a *cestui que trust*, unless the price paid were so indadequate as to amount to a collusion by the purchaser with the trustee in the perpetration of a fraud on the estate.

In their petition the *cestuis que trustent* merely allege that the price paid by the appellant was "much below its true value," and do not accompany their petition with any affidavits, certificates or estimates of value. It is difficult to see how two women living in Baltimore could swear to a price being below the

true value of property in the District of Columbia, unless they had been made acquainted with its value by the receipt of *bona fide* offers above the price offered, and about the same time or unless they had heard of recent sales in the same block for a higher price. If their knowledge had been based on such facts, it is reasonable to assume that the petition would have set them out. If their knowledge of a hearsay kind be based on the affidavits of others, such affidavits ought to have been filed with their petition, and not afterwards except with the leave of the court for that purpose first had and obtained. With the trustee's response or return to the rule to show cause, are exhibited certain affidavits. It appears that the assessment is $4,251, and that of this assessment $1,400 is for improvements leaving $2,851 for the ground. That the improvements are fast falling into decay; that the house is of wood, has no cellar and no modern improvements, and that the value of the property is in the lot and of the lot in its location (Printed Rec., p. 33); that there is no rear exit; that it was offered for sale by public auction by Thos. E. Waggaman about two years before; that the highest bid was about $7,000 as recollected by the tenant, that it was not sold (Printed Rec., p. 33.)

It must be remembered that any value which the lot may have received from the proximity of the new Pension Building had been acquired three years before the sale to the appellant,—the said Pension Building having been completed nearly three years before. Tyler, a real estate broker, having an office directly opposite, regards the price paid, $11,000, as the full value of the property, and says, in his affidavit, "that the owner was exceptionally fortunate

to find a purchaser to give that amount for it." (Printed Rec., p. 34.) Thomas E. Waggaman, also gives an affidavit that the price paid was fair. (Printed Rec., p. 38.) The tenant, and the members of the firm of H. Gray & Co., all swear to the same effect as to the value of the property, and the purchaser states, in his affidavit, that the price was about $1,000 more than any other person would have given for the property at the time, and after explaining why it was $1,000 more, he says: "I invested my money in this property on the presumption that it was a fair and honest transaction, approved by the court in due form; and after having paid for and received an abstract and certificate of title to said property as vesting in James B. Green, trustee, with power in him to sell the same, as appears in said abstract and opinion of the Columbia Title Insurance Company."

All these affidavits accompany the return. After this return of the trustee, certain affidavits in the interest of the *cestuis que trustent* were filed pell-mell, without leave of the court, as to the *believed* value, and as to the prospective or, rather, *prophetic* value. These affidavits, thus irregularly filed, do not show that affiants have sold any property in the immediate vicinity or that they have known of such sales. One of these affiants says: "Had I control of said property, I believe I could make it bring more than that amount ($5.00 per sq. foot) at this time, and, furthermore, I believe, having had said —— appraised by other real estate brokers, that it would bring $5.00 per foot at forced sale." (Printed Rec., p. 46.) This affiant wants control of the property to such an extent that he went about among other real estate men and had the property appraised, and

that from what he thus learned he believes this and that, and this affiant is a real estate broker himself.

Better than all these irregularly filed affidavits, is that one of A. T. Britton (printed Rec., p. 49), a counsellor at law, at the Pacific Building, 622 F st., of which he is one of the owners, and who is also interested in the new office building, the "Atlantic," on F street, above 9th, and who ought to know something of the value of land on F st., and who swears that he does know something of that value for office purposes; that he knows the lot of land in dispute 511 F st., and "that he regards its value from its situation, as chiefly for that of an office building;" that the lot itself is, however, too small to be used for that purpose; that he thinks nearly $4.00 a foot is a handsome price for that lot, and all it is worth; that he twice declined to purchase that lot when offered to him at a less price.

The affidavit of Ballinger shows that the other part of same lot, being 2 feet wider, was offered for sale from November 1st, 1885, for about a year continuously, for the price of $10,000. (Printed Rec., p. 34.)

The lot in controversy "is twenty-eight feet front by a depth of 101.9¾ ft., and the price at which it was sold is its full value, very nearly four dollars a foot. The property has no alley in the rear and no means of reaching the lot at all except from its front." (Printed Rec., p. 35.)

As the assessed valuation of the lot itself, for the year 1888 (print. Rec., p. 38), is $2,851, the improvements being virtually worthless, as there is no rear exit; it seems that the price paid, being nearly four times greater than the assessment, must have been its full value as stated in the beginning, and

could not have been much below its true value as averred by the petitioner.

This was the state of the record when Judge Cox, on the 2d day of May, 1888, signed the order (Pr. Rec., p. 49), which recites that upon the cause coming on to be heard on the petition of the *cestuis que trustent* and on the answer of the trustee, and after full argument, the court denied the prayer of the petition to have the order confirming the sale set aside. This appellant did not make any response to the rule to show cause otherwise than to file his affidavit (cited *supra*), as will be shown by the record, and Judge Cox, by his order in the premises, evidently did not deem any action on the part of the purchaser as necessary. The appellees, in a motion to dismiss, filed by their counsel in this court, represent this appellant as making a return by filing his own and other affidavits, but the record shows that this is not the case. From this order of Judge Cox, the *cestuis que trustent*, who had no right whatever to the property, and whose income would be much enhanced by the investment of the purchase money, took an appeal to the general term, but gave no notice thereof to the purchaser, and pending this appeal, treated the purchase money as theirs by getting it paid into court holding special term, and invested and getting orders of the court in special term to pay them the interest (Pr. Rec., pp. 51-55). Certainly such conduct touching the proceeds of sale, would ordinarily work a confirmation of the sale, and would estop any person claiming to own the property from asserting any title against a purchaser (4 Gill., 124). The same estopple ought to apply to a sale under a will which provides that

the purchaser should not see to the application of his purchase money, and a fortiori in case of a judicial sale, as the general term deemed the sale in controversy, where the purchaser is never affected by the disposition of the purchase money, however unwise or illegal (*Knott et al.* vs. *Stearns et al.*, 91 U. S. S. C., p. 641). The fact that the special term, at the instance of *cestuis que trustent*, dealt with the proceeds of sale as their own, seems to have been ignored by the General Term, for by its decree passed December 4th, 1888 (Pr. Rec., p. 60) the trustee is ordered to pay into the Registry of the court, in full, the sum received by him as the price of the property. This may have been on the ground that the record, on which they were to act in the appeal, excluded anything subsequent to the appeal, but the petition of *cestuis que trustent* to the General Term to have the trustee removed (filed Oct. 9th, 1888, Rec., p. 51) gave notice to the General Term that some such orders had been passed, which resulted in a waiver of their appeal, so far as the sale was concerned, and even the *cestuis que trustent* in this petition to the General Term, pray relief solely against the trustee, asking for his removal, and further, that he be denied commissions on the sale and that he pay certain moneys into court to reimburse the petitioners if it be, as they seemed to fear it would be, inexpedient to set aside the sale.

Notwithstanding all this, the General Term, without hearing the purchaser (and if instead of being the case of a purchaser vested with the title, it had been the case of a bidder at a judicial sale with the bid accepted, the bidder would have had a right to be heard), without issuing a rule upon him to be

heard, without any process whatsoever upon him by the *cestuis que trustent*, by its decree of Dec. 4th, 1888, attempted to vacate the sale, by so decreeing on an appeal wholly inoperative as appellant claims, and to reverse the order of confirmation of March 7th, 1888, although no appeal from that order was ever taken. This appellant hearing of the decision of General Term, filed his petition on November 26th, 1888, before the decree as framed was signed, and gave notice thereof to counsel of the present appellees (pp. 57 to 60.) By this petition the attention of the General Term was called to the fact that no appeal had been taken from the order of March 7th, 1888, and that the appeal from the order of May 2d, as to that part refusing to reopen the order passed on March 7th, was wholly inoperative because the same was within the discretion of the court holding special term, thus showing to the court in general term that there was nothing before it regarding the sale or the order approving the same upon which a decree could be based by that court. The General Term, on the theory that the sale was a judicial sale, and that the purchaser was subject to its jurisdiction and had been served with rule in special term, refused to modify the proposed decree except to add that the petition of this appellant be dismissed with costs, and thereupon from so much of the decree as set aside the sale and vacated the order of March 7th, 1888, confirming the sale, the purchaser appealed to this court.

Reply to Motion to Dismiss.

The appellees have filed a motion to dismiss the appeal of Kenaday on the single ground that the matter in dispute is not of the value of $5,000 exclusive of interest and costs. But from the foregoing statement it is confidently submitted that the matter in dispute is the land purchased by appellant for which he has paid eleven thousand dollars, which the appellees assert is much below the real value. Even if the decree below made provision for the repayment of this purchase money to the appellant it would be idle to argue that the court below could finally annul a sale of property worth eleven thousand dollars, and that this court could have no jurisdiction to review said decree, because the validity of the sale and the rights of the purchaser thereunder are the very matters in dispute, and the value of the sale is fixed by its proceeds, while the value of the purchaser's rights to the property, for which he is seeking protection, is the value of this property itself admittedly more than twice the jurisdictional amount.

Assignment of Errors.

The decree of the court below was erroneous because:

(1.) The court in general term had no jurisdiction to set aside the sale made to appellant, Kenaday;

(2.) The court in general term had no jurisdiction to vacate the order of the special term of March 7, 1888, confirming this sale to appellant, Kenaday;

(3.) The court in general term had no jurisdiction to reverse in *toto* the order of the special term passed on May, 2, 1888, even if it had jurisdiction to reverse so much of said order as denied the prayer of appellees' petition for the removal of the trustee;

(4.) The court in special term not being the vendor of the property, the appellees, who were only *cestuis que trustent* of the rents, had no right—especially by a summary proceeding, to have annulled a sale by their trustee to an innocent purchaser for full value *bona fide* paid.

Points and Authorities.

It will be seen by reference to the organic act of the court below, 3d March, 1863, and sections 770, 772, and 800 of the Revised Statutes relating to the District of Columbia, that the general term can not exercise any jurisdiction in equity unless (1) a suit or proceeding or motion be ordered by the court holding the special term to be heard at a general term in the first instance, or (2) a motion be filed in a suit that by the rules of the general term, is designated an enumerated motion, or (3) an appeal by a party aggrieved be taken from an order, judgment, or decree made or pronounced at any special term, provided the said order, judgment, or decree involve the merits of the action or proceedings. As the enumerated motions designated by the general term, apply only to common law proceeding (Rule 99, S. C., D. C.; Mackey's Practice and Procedure, Supreme Court, District of Columbia, pp. 234, 235; *Doddrige* vs. *Gaines*, 1 MacA., pp, 343, 344), and as the petition of the present appellees was not or-

dered to be heard at a general term in the first instance, it is clear that the general term had no jurisdiction in the premises, unless the same were appellate and the decree of the general term assailed here, purports to be in the exercise of such appellate jurisdiction.

The organic act of the court below was drafted, it is said, by Senator Harris of New York—a lawyer and judge of that State (1 MacArthur, p. 343), where law and equity are blended, and derives its provisions from the New York Code (*Met. R. R. Co.* vs. *Moore*, 121 U. S., p. 570); but the court in general term, by confining enumerated motions to common law cases, shows that so far as its rules were concerned, its practice in equity should be governed, it being a United States Court where equity must be distinct from law (11 How., 674; *Fenn* vs. *Holme*, 21 How., 481) by the rules of practice in equity prescribed by this court.

The Revised Statutes, D. C., § 800, provide that non-enumerated motions in all suits, and proceedings at law and *in equity*, shall first be heard and determined at special terms. It has been held that what are not designated as enumerated motions, are non-enumerated motions, and that enumerated motions are such as must involve the merits of the suit (1 MacArthur, 344), and this court, in *Met. R. R. Co.* vs. *Moore*, 121 U. S., p. 566, says: "Even in cases " of motions not involving the merits, such as non-" enumerated motions, which, by § 800, it is said, " 'shall first be heard and determined at special " terms; it is also provided by the same section that " the justice holding such special terms may, in his " discretion, order any such motions or suit to be " heard in the first instance at a general term."

It follows from this that, as the general term confined enumerated motions to common law cases, all motions in equity are non-enumerated, and cannot be said to involve the merits, although they may, to use the language of the N. Y. Code as amended and in force in 1863, when the organic act was passed, "affect a substantial right,"—such as motions for injunctions, dissolutions of injunctions, receivers, and the like; but the special term has a discretion in such cases, either to hear and determine said motions, or order the same to be heard in the first instance at a general term.

It is thus that the general term harmonizes the practice in equity under the organic act with the practice prescribed by this court under the Act of Congress of 1842, and that a motion to reopen a decree confirming a sale cannot be heard at general term after the same has been heard and determined by the special term.

The court in general term, however, bottomed its decree on the so-called *appeal* from the refusal of the special term to disturb the order of confirmation of sale. We have seen that appeals are given in equity causes from orders or decrees involving the merits. This appellate jurisdiction is very much narrower than was that of the general term of New York in 1863, for by the New York code then in force and as amended in 1849, 1851, 1852 and 1862—an appeal to general term from special term was given in five classes of orders, to-wit:

"1. When the order grants or refuses, continues "or modifies a provisional remedy;

"2. When it grants or refuses, a new trial, or "when it sustains or overrules a demurrer;

"3. When it involves the merits of the action or "some part thereof or affects a substantial right;

"4. When the order in effect determines the "action and prevents a judgment from which an "appeal may be taken;

"5. When the order is made upon a summary "application in an action after judgment and "affects a substantial right."

Our organic act gives no appeal from an order in an action after judgment (or, as we not having here a civil action making no distinction between law and equity, may add—in a suit after decree) upon a summary application when the order affects a substantial right—and gives no appeal from an order affecting a substantial right, and no appeal from such orders having been since given by Congress after a lapse of nearly 27 years, it is fair to assume that no such appeal was intended to be given; that it was not a *casus omissus* as to any of the classes of orders mentioned in the New York code.

This court, in *Horey* vs. *McDonald*, 109 U. S., pp. 156 and 157, says, in speaking of the equity appeals in Supreme Court District of Columbia, as follows:

"We do not perceive that there is anything "peculiar in these appeals from the special to the "general term to take them out of the operation of "the general principles and rules which govern "appeals from one court to another."

In the present case it cannot be said that the appellees were deprived of any title to the land, be-

cause they never had it and never could have it by the will, the testatrix providing trustees for a succeeding generation, nor were they deprived of any right whatever, for the will allowed the conversion of realty into personalty, and certainly made it proper where a house was falling into decay, and the trustee had no funds wherewith to repair or build anew, and the fact that their income is increased, shows it was proper.

It is difficult to see how any substantial right of theirs was affected by the order, even if an appeal from an order affecting such rights had been given by Congress. The court below intimated that it was the tendency of the *courts* of to-day to give the right of review by appellate tribunals wherever the substantial rights of the parties are involved. It might be the tendency of the *legislatures* of the States, but hardly of courts, and until Congress does give such revisory power to the general term as the State of New York gave it, we think the general term of the court below, in its tendency to usurp the jurisdiction, will be checked by this court.

It may not be amiss to know what the New York courts had decided even under their code, touching appeals to general term from like orders in similar cases prior to 1863, when Congress passed the organic act.

See *Kingsland* vs. *Bartlett*, 8 Abb. Pr. R., 42;
Ibid., 28 Barb., 480;
Young vs. *Bloomer*, 22 How., P. R., 383;
Buffalo Saving's Bank vs. *Newton*, 23 N. Y., 160.

In *Kingsland* vs. *Bartlett*, which was the case of a judicial sale, the grounds of motion were inadequacy of price, and the fact that a judgment creditor, who intended to bid upon the property to protect himself, was misled by the plaintiff as to sale, and thus prevented from attending; and the court held that the order denying the motion to open the sale was within the discretion of the court and not appealable, and "this discretion" said the court, "is "regulated as in every case where the court is called "to exercise it, by this consideration, whether from "the collateral facts, the conduct of the parties and, "perhaps, the amount for which the property was "sold, it would be *expedient* in justice to all con- "cerned including the purchaser, to order a resale. "This excludes the idea of any right on the sub- "ject. There can be no right where no legal mis- "take has been committed by those who have con- "ducted the proceedings. There may be hardship, "but it is entirely for the consideration of the judge "who heard the application."

The italics are the court's, and it shows how careful it was of a purchaser's rights which were entirely ignored by the court below in general term. In 9th Paige, 261, in a case properly before the court, it being a judicial sale where the purchase-money had not been paid and the master's deed had not been given, and the parties were injured by the fact that the sale had been made of several houses in New York City as a whole for $21,000 instead of in parcels, it appearing that if sold in parcels $10,000 more would have been given, Chancellor Walworth, said: "The parties injured thereby are entitled to relief, "by a resale or otherwise, so far as relief can be

" given without doing positive injustice to *bona fide* " purchasers of the premises at the sale."

In *Young* vs. *Bloomer*, *supra*, it was held, that an order denying a motion to set aside a sale on the ground of grossly inadequate price and not for any irregularity, is not appealable to the general term.

These cases have been followed by others since 1863. It was held in *Schætler* vs. *Gardiner*, 47 N. Y., 406, that an order denying a motion to set aside a judgment in a case where the court below had jurisdiction is not appealable; the appellant has not an absolute legal right to set aside or vacate the judgment on motion. See, also, *Foote* vs. *Lothrop*, 41 N. Y., 358, and cases cited.

These cases clearly show that in 1863 an order of special term opening or refusing to open a decree of sale, was not appealable to general term under a code of law which gave appeals to parties aggrieved by orders affecting substantial rights, as well as orders involving merits. *A fortiori*, would not such an appeal lie from special term to general term under an act of Congress giving the general term jurisdiction in only one of the classes of orders applicable in New York.

The present petition is not based on inadequacy of price, or gross inadequacy of price, but on fraud alleged of trustee with which the purchaser, if it were true, was not implicated. It does not ask for a vacation of the sale but of the order confirming the sale—so that, if the present appellees desired the sale to stand, the purchaser was to be held. Their petition was not apt to convince the special term of their frankness, because they wished it to appear to the court that the trustee was an absconder with the

money, and had to be traced to Baltimore, when his return shows that he called on them in Baltimore and told them of the sale, and wrote a letter to one Raleigh, son-in-law of one of the appellees, who wanted the trusteeship, informing him of the confirmation of the sale and the payment of the money; which letter was duly mailed and received and contents made known to these appellees on March 8th, 1888. It seems that Raleigh had produced the discontent (printed Rec., p. 41). Whatever the differences between the trustee and his *cestuis que trustent*, it is apparent that the purchaser was perfectly innocent in the premises, and that the petition did not venture on any allegation *tracing* fraud to him. The allegation of fraud in the petition—if pertinent—was to the relief asked against the trustee, his removal from the trust, and not to the relief asked for the setting aside of the order of March 7th, 1888.

Hence, so far as the purchaser is concerned, the petition must be considered as a request to the court to set aside the sale, because they did not know that the trustee was offering the property for sale and because the price obtained was much below its true value. If a similar request in a case of judicial sale be to the favor of the court and be within the discretion of the court to grant or deny, as held in the New York cases cited *supra*, it is certainly not a matter of right to have set aside a sale, made under a power in a will, sanctioned by a decree, and ratified by the court when title has been vested in an innocent purchaser. In a judicial sale the trustee conveys only the interests of the parties to the suit, and they have a voice in the disposal of those interests where the court is vendor, but no legal right to

have the sale set aside on a motion or petition to re-open the biddings. In a sale by the trustee in the premises under the will, the title of the testatrix was conveyed and the court was not the vendor.

The decisions of the General Term itself were in accord with the above cases in New York. *Boucher* vs. *Boucher*, 3 MacA., 455; *Phillips* vs. *Negley*, 2d Mackey, 236, which case though overruled by this court (see *infra.*), was overruled on other grounds.

We are not obliged, however, to look to New York to know what motions in equity are within the discretion of that court to grant or deny. This court tells us in District of Columbia cases that the denial of a motion or petition to re-open a decree is not appealable.

> *Brockett et als.* vs. *Brockett*, 2 How. 240;
> *Wylie* vs. *Cox* 14 How., 2.

And in *Brockett* vs. *Brockett*, before any appeal was taken from the decree sought to be re-opened, and rendered, on May 10th, 1843, a petition was filed as in this case, to open the decree and the court below took cognizance of the petition and referred the matter to a master to report on the matter stated in the petition. His report was filed on the 9th of June following, and the court then refused to open the decree, and from this refusal as well as from the decree of May 10th, the defendants took an appeal, and gave bond with sufficient security to operate as a supersedeas. This bond was given within ten days of the refusal of the motion but was more than a month after the original decree. And this court Judge STORY delivering its opinion, held, to use the language of Ch. Justice TANEY, in *Wylie* vs. *Cox*,

"that the appeal was well taken, not because an ap-
"peal will lie from the refusal of a motion to open the
"decree and grant a reopening, but because the court
"regarded the original decree as suspended by the ac-
"tion of the court on the motion, and that it was not
"effectual and final until the motion was overruled."

This decision shows that the *cestuis que trustent* who knew of the decree sought to be opened the day after its rendition, and who had twenty days, exclusive of Sundays, within which to appeal therefrom (rule of court below) chose to file, within ten days and during the same term, a petition to open the decree, and when the prayers of this petition were denied on May 2d following, they still, had according to the above decisions, the twenty days to appeal from the decree of confirmation, but did not do so, appealing only from the refusal. That they should have done so is evident from these cases, and this court in *Sage* vs. *Railroad Co.*, 96 U. S., p. 714, says: "In relief against the sale, resort can alone be had to an appeal from the decree of confirmation," meaning, of course, relief against the sale in an appellate tribunal.

The *cestuis que trustent* not having taken an appeal from the order of confirmation and the so-called appeal from the order refusing to set aside the order of confirmation, not being operative, it is clear that the General Term had no *appellate* jurisdiction in the premises, and its decree against the sale to this appellant is *coram non judice*, and this court has the authority to set aside the said decree.

Phillips vs. *Negley* 117 U. S., p. 671.
Blossom vs. *R. R. Co.*, 1 Wall., 655.
Hovey vs. *McDonald*, 109 U. S., 155.

The said decree was very harsh as to this purchaser; not only utterly ignoring his rights, as aforesaid, but visiting upon him punishment; taking away his property which he had purchased, and making no provision for the repayment of the purchase money, with interest and expenses.

The character of the sale herein, and the relation of the court to that sale, have been already pointed out in the statement. It is confidently submitted that there is in this case no judicial sale. It has been further shown that, whatever the character of the court's order of confirmation or approval of the trustee's action on March 7th, 1888, no appeal was taken from that order, and it is earnestly insisted that from the refusal of the court in special term to set aside that order no appeal lay to the general term.

But even if these contentions, which would conclude the matter, are not correct, the decree of the general term setting aside the sale to the appellant, is undoubtedly a final decree as to him, and the jurisdiction of this court in such a case has been maintained in the case of *Blossom* vs. *The Railroad*, 1 Wall., 655, affirmed in and distinguished from the case of *Butterfield* vs. *Usher*, 91 U. S., 248, which this court refused to entertain on appeal from an order passed therein, where the court below had jurisdiction, where the sale set aside was a judicial sale, and where the decree appealed from directed a resale and the return of the purchase money with interest to the original purchaser.

We have in the statement treated the title as being in Chapman Maupin until his deed of February, 1888. It may be said that Chapman Maupin wished to resign the trust only with leave of the court, and that the will permitted him to appoint his successor without such leave; but the bill of complaint to have a new trustee substituted averred that he had not rendered an account, and, naturally, an honest trustee wishes his accounts to be passed before retiring from his trusteeship. Chapman Maupin tendered himself willing and ready to account to the court below in the very answer in which he consented to a decree for a trustee to succeed him, and such decree was passed by the court after the accounting was made, and allowed him to withdraw his vouchers.

That the appointment of a new trustee is not complete until the property is vested in him, see Perry on Trusts, Vol. 1, § 284. There being no decree to convey, the title remained in Maupin until his conveyance. (*Miller* vs. *Sherry*, 2 Wall., pp. 248 and 249, and cases cited *in arguendo*, p. 241.)

In *Glenn* vs. *Busey*, MacArthur and Mackey, p. 454, a case not involving title to real estate in the District of Columbia, it was held that a trustee appointed by a Virginia court to succeed a trustee who had not conveyed to him, could sue here as to personalty, but this right was given to that trustee by the Virginia statute law (Ibid., p. 462), thus bringing it within the exception noticed by Mr. Justice Swayne in *Miller* vs. *Sherry*, *supra*, p. 249.

The purchaser's conduct, as disclosed by this record, seems to entitle him to the most favorable consideration of this court.

As we have seen there was nothing in the record of the suit at the time of his purchase to put him on enquiry as to the relations of the trustee, Green, with his *cestuis que trustent*. At the outset he was fortified by an abstract of title furnished by the Columbia Title Company, one of the two leading authorities on titles in this District. When the trustee sought from the Chancellor, in a suit where he had filed his bond, an approval of his action, although he believed his authority ample under the will, that approval was given by Justice Cox, one of the most learned and able equity lawyers this District has ever known, and when on the petition of the appellees, Justice Cox was asked to revoke his approval, he declined after full consideration to disturb the order.

We submit that the decree of the general term should be reversed.

GEORGE F. APPLEBY,
CALDERON CARLISLE,
For Appellant.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1889.

JAMES B. GREEN, *Appellant*,

vs.

SUSAN B. EDWARDS and ALICE TYLER, *Appellees*.

No. 1.237.

Brief of Counsel for James B. Green, Appellant.

H. O. CLAUGHTON,
CAZENOVE G. LEE,
For Appellant.

R. O. Polkinhorn, Printer, 632 and 634 D Street.

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Brief of Counsel for James B. Green, Appellant.

THE FACTS OF THE CASE.

Mary E. McPherson by her last will and testament devised the property in controversy to Chapman Maupin and Robert W. Maupin, and the survivors of them, with power in them or the survivor of them to substitute a trustee in place of them or him, with the same rights and duties upon the trusts therebefore declared, with full power and authority at his or their discretion, from time to time to sell by public or private sale, and to convey to the purchaser all or any part of the said trust property and

to receive and grant acquittance for, and reinvest the proceeds of such sales, and relieving the purchasers from the obligation to see to the application of the purchase money.

The trusts referred to, were for the use of the appellees, Susan W. Edwards and Alice Tyler, during their lives, and after the death of the said Susan W. Edwards, one moiety for the use of her children, or their decendants, and if she died without decendants, to Alice Tyler, and as to the other moiety, after the death of Alice Tyler, for the use of her decendants, and if Alice died without decendants, then to the use of her mother, Mary M. Tyler during her life, and after her death, to be distributed to the next of kin of the said Alice, other than her father.

The trustees accepted the trusts and performed them for several years when Robert W. Maupin died and Chapman Maupin, the surviving trustee, desiring to be relieved of the trust, this suit, a friendly proceeding, was instituted for that purpose. A decree was passed substituting the said James B. Green as trustee in his place, with all the power, rights, title and estate which was by the said will vested in the said Chapman Maupin and Robert W. Maupin. (See Record, p. 19).

The same Green accepted the trust, gave the required bond, and assumed the duties of the trusteeship.

In the exercise of the large and full discretion vested in him, he sold the property to Alexander M. Kenaday for the sum of $11,000.00, reported the sale to the court, and the sale was confirmed.

When the life tenants, the appellees, heard of the said proceedings they were dissatisfied with the action

of the trustee and of the court, and filed their petition praying that the decree confirming the sale should be set aside, and further that the said James B. Green should be removed from the trusteeship (Rec., p. 28).

The cause being heard in special term upon the petition and answer of the said trustee the prayer of said petition was denied. (See page 49 of Record.)

An appeal was prayed from this decree and allowed upon the condition that the appellees should execute and file an appeal bond in the penalty of fifty dollars, which condition was never complied with, as appears from the Record.

The court in general term heard this appeal, and reversed the decree of the special term, which confirmed the sale to Kenaday—which was not appealed from—and set the sale aside. And further entered a decree removing the trustee (see Record, page 60.)

REPLY TO THE MOTION TO DISMISS.

The decree complained of directs the removal of appellant, the holder of the title and estate in property worth at least eleven thousand dollars, which title and estate it is his right and his duty to defend. He stands for the *cestui quiestent*, who are not parties to these proceedings, as well as for himself. The law is well settled that a trustee may appeal when the property under his charge is of sufficient amount, although he had no interest in the estate.

In the case of *McPherson* vs. *Cox*, the bill prayed, first, that McPherson be discharged and removed from his trust, and, second, that he be compelled to deliver up a bond which he held.

These matters were as distinct as these in repect to which relief was prayed in this case. The commissions arising from the execution of the trust in that case would not have been of sufficient amount to give this court jurisdiction of the appeal—from so much of the decree as removed the trustee—yet this court took jurisdiction of the appeal from that part of the decree, and reversed the same.

94, U. S., 404.
Canter vs. *Cushing*, 8 Cranch, 256.
Atkinson vs. *McCormack*, 82 Va., 791.

ERRORS OF LAW IN THE SAID DECREE.

(1) The sale was fairly, and according to the proofs wisely, made and the powers and discretion of the trustee being ample, the purchaser was entitled to his purchase. It was error in the court to decide the case upon its merits, upon the question as to removal of the trustee and divest him of his estate and title upon a mere interlocutory proceeding. The court in General Term if dissatisfied with the proceedings appealed from should have sent the case back to the special term for the usual proceedings as to *upset bid*, if this was a *judicial sale*. If it was not a judicial sale, the parties should have been left to take such proceedings as they might deem proper for the protection of their rights.

2d. The case was in no condition upon the record for a decree removing the trustee. The grounds for his removal, as set forth in the petition, were denied by an answer fully responsive to the petition, and as the case was heard upon the petition and answer, by

the Special Term, no proof having been taken by the appellees to sustain their petition, the answer was a complete vindication of the trustee.

3d. The petition of the appelles, was of a two fold nature—so far as it prayed for relief from the sale, it invoked the discretion of the court for setting aside a final decree theretofore rendered. In so far as it asked for the removal of the trustee it prayed for independent relief. To that extent it was not an appeal to the decision of the court, but a demand for judgement upon the merits. Upon this part of the case the cause was set down for hearing upon the merits on the petition and answer.

4th. Was there any error in the decree of the Special Term upon this point?

The allegations in respect to that question, were two fold—first that the trustee exceeded his powers. Second. That he unfaithfully and fraudulently misused them.

The first allegation involves a purely legal question, and can be disposed of only by reference to the will which conferred the powers and imposed the duties of the trusteeship. (See Will, page 6 of the record. Item 9.)

Is it possible to conceive of a discretion more ample or complete? Conceding the *lowest* exercise of such powers, is there any limit to the discretion except that which is expressed in the confidence and authority of the testatrix?

Whether or not the exercise of such a power will be restained by the court, does not depend upon the *wisdom* of its exercise or upon the opinion of the court, that the court would not have so exercised it, but simply upon the question of the fair and honest

exercise of the discretion with which the owner of of the property had clothed him. The law upon the point is so clearly laid down in Sec. 511 of Perry on Trusts, that a citation therefrom is all that is required. "If the trustees exercise their discretionary powers in good faith, and without fraud or collusion the court cannot review or control that discretion. * * And if the administration of the trust is thus rightfully brought within the jurisdiction of the court, the power may be required to be exercised under the eye of the court, *though the exercise of it must still remain the discretion of the trustee, and not that of the court.*"

1 Leading cases in Equity, Vol. 1, Ph. 1, p. 377 (marginal); *Reed* vs. *Patterson*, 44 N. J., 211; Perry on Trusts, sec 277.

The decree appointing the appellant substituted trustee, vested in him, as far as the decree could, all the powers, duties, rights and obligations with which the will of Mary E. Macpherson had vested the original trustees and the survivor of them, but did not direct the retiring trustee to convey the property to the substituted trustee. The retiring trustee, as he was authorized to do by the will, by deed substituted the appellant trustee in his place, and thus the appellant is in by direct chain of title from the testatrix. (See Record, page 42.)

All that the court undertook to do was to see that the trustee should be faithful in the exercise of his discretion. The discretion was derived from the will, not from the decree.

Even if it appeared that the price for which the property was sold was not its full value, and even if the court was of the opinion that it would become

more valuable in the future, the court could not control the discretion of the trustee.

But inasmuch as the discretion of the trustee is sustained by the judgment of such men as Thomas E. Waggaman and A. T. Britton, it would require a very high order of proof to impeach it.

Besides, it must be borne in mind that the trustee was acting not only for these life beneficiaries, but for the reversioners as well—whom he alone represents in this controversy—the life-beneficiaries never having made them parties to the suit. These parties named as reversioners are living and *sui juris*, and are not complaining of the action of the trustee. It is his duty to look to their interests in the discharge of his trust, for he is *their trustee*.

Secondly. As to the question of fact, the allegation in the petition that the trustee has acted unfaithfully, the answer of the appellant is a full and responsive denial. Besides, the cause having been heard upon petition and answer, everything in the answer, whether responsive or not, is to be taken as true, and there was, therefore, no ground for removing the trustee because of unfaithfulness in the execution of the trust.

That he has been greatly annoyed by the captious and querulous conduct of the appellees, there can be no doubt, and if, under these circumstance, he was sometimes betrayed into manifestations of impatience, it is not a matter of surprise.

We respectfully submit that the decree of the General Term should be reversed.

H. O. CLAUGHTON,
CAZENOVE G. LEE,
For Appellant.

Supreme Court of the United States.

OCTOBER TERM, 1889.

No. 1236.

ALEXANDER M. KENADAY, APPELLANT,

vs.

SUSAN W. EDWARDS AND ALICE TYLER.

No. 1237.

JAMES B. GREEN, TRUSTEE, APPELLANT,

vs.

SUSAN W. EDWARDS AND ALICE TYLER.

OPIFION OF THE COURT AND BRIEF IN BEHALF OF APPELLEES.

LEIGH ROBINSON,
HENRY WISE GARNETT,
Solicitors for Appellees.

JUDD & DETWEILER, PRINTERS.

Supreme Court of the United States.

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ALEXANDER M. KENADAY, APPELLANT,

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JAMES B. GREEN, TRUSTEE, APPELLANT,

vs.

SUSAN W. EDWARDS AND ALICE TYLER.

OPIFION OF THE COURT AND BRIEF IN BEHALF OF APPELLEES.

Decided November 19th, 1888.

The Chief Justice and Justices James and Merrick sitting.

Mr. Justice JAMES delivered the opinion of the court:

This cause comes here on appeal from an order of the special term in equity refusing to set aside its former order confirming a sale made by one James B. Green as trustee.

The merits of the question involved will appear in the following statement of facts:

A certain Mary E. Macpherson, of Baltimore, died in the year 1873 leaving her last will and testament, by which, after making several unimportant bequests, she devised as follows: "Unto my nephews, Chapman Maupin and Robert W. Maupin, of the State of Virginia, in fee simple, my lot, with the house and other improvements thereon, on F street between Fifth and Sixth streets, * * * in the city of Washington, to be held by them and the survivors of them and by such person or persons as may be appointed to execute the trusts declared by this my last will, by the last will and testament of such survivor, or by other instrument of writing executed for that purpose by such survivor, but in trust nevertheless to manage and control the same and to take the rents, profits, and income thence arising and to pay the one-half of the net amount received * * * to my daughter, Susan W. Edwards, for and during her natural life."

After the death of the said daughter the trustees were to pay the said moiety of rents to the separate use of the granddaughter of testatrix, Susan W. Edwards, and after the death of the latter were to distribute the whole of the said moiety according to certain contingencies.

As to the remaining moiety of rents the will directed that they should be paid to the sole and separate use of the granddaughter, Alice Tyler; gave to Alice Tyler power to appoint said moiety, and then provided where it should go on certain contingencies. It then provided as follows:

"And I do hereby confer upon my said trustees full power and authority, at his or their discretion, from time to time to sell by public or private sale * * * all or any part of the trust property in this will devised and bequeathed to my said trustees, and to receive, grant acquittances for, and reinvest the proceeds of such sales," &c.

It appears that one of the trustees, Robert W. Maupin, died in 1876, and the other, Chapman Maupin, expressed a desire to resign his functions, and that thereupon Susan W. Edwards, widow, and Alice Tyler, by her next friend, filed a petition in this court stating these facts, praying an account by the surviving trustee, and the appointment of a new trustee. Chapman Maupin in his answer admitted these allegations, offered to account, and expressed his desire to resign his trust.

On 29th March, 1882, the following decree was made: "That the fee-simple estate in lands located in the city of Washington, D. C., devised by the last will and testament of Mary E. Macpherson, deceased, to Chapman Maupin and Robert W. Maupin, upon certain trusts declared in said will be, and the same is hereby, taken out of the said Chapman Maupin, the survivor of the said co-trustees, and vested in James B. Green, of the city of Baltimore, together with all the rights, powers, duties, and obligations incident thereto under the said last will and testament; and it is further adjudged, ordered, and decreed that all the trusts vested by the said will in the said co-trustees, and surviving to the said Chapman Maupin be, and they are hereby, abrogated and repealed as to him and conferred upon the said James B. Green, subject to the terms of the said last will and testament, and that the retiring trustee pay over and deliver to his successor hereby appointed all money, books, papers, and other property belonging or relating to the said trust estate.

"And it is further adjudged, ordered, and decreed that the said James B. Green, trustee, as herein provided, shall file with this court, before any sale of the said real estate under the powers contained in the said will, a bond in the sum of eight thousand dollars, with a surety or sureties to be approved by this court, for the faithful performance of his duty in connection with the said sale, and that he shall at all times be subject to the control and order of this court in matters touching the trust, and that the costs of this proceeding are payable out of the principal of the trust estate."

About eighteen months after his appointment a correspondence began between the substituted trustee and the devisees of the rents, in which the trustee urged the propriety of selling the property and reinvesting the proceeds in loans, while the devisees objected to the proposed transactions. In November, 1883, he submitted to them an offer of $5,500; in April, 1884, he expressed surprise and annoyance that they should disapprove of a sale at $6,500 and endeavored to convince them that that was "a capital offer;" in October, 1886, he wrote several letters from Los Angelos, California, whither he had removed his residence, urging the acceptance of $8,500. In this correspondence Mrs. Edwards had stated her opinion that the property was worth $12,000—an estimate which the trustee, judging from the more advantageous point of a very distant residence, characterized as

fabulous. He expressed, at first, only solicitude that the devisees of the rents should, by means of a reinvestment at 6 per cent., enjoy a larger income, and that the remaindermen should avoid loss by deterioration of the house; but when Mrs. Edwards, in answer to his arguments, intimated a wish that he should relieve himself of the anxieties of the trust, he stated, in a letter dated 2d December, 1886, "frankly and calmly," as he assures her, the terms on which he would retire. In order to do justice to this offer we give his own words: "If the property be worth what you and your friends value it at (twelve thousand dollars), my commissions at 5 per cent. on its sale will be six hundred dollars; but estimating on the sale I recently made at eighty-five hundred dollars as the true basis, four hundred and twenty-five dollars will be my compensation. Nearly two thousand in rent and collection from Chapman Maupin have passed through my hands since I took charge, and the commissions at 5 per cent. on this amount would be a hundred dollars. Add this to the four hundred and twenty-five dollars and you have the amount I am called upon to relinquish. If you send me a draft on New York for five hundred and twenty-five dollars I will petition the court to let me resign, release my securities, and appoint Mr. H. H. Raleigh my successor." The trustee's arithmetic appears to be trustworthy. In a previous letter to Mr. Raleigh, the gentleman just referred to, he had said: "As to the trusteeship, it has never been the source of any profit to me, but the property in my hands has been kept up and has increased handsomely in value (he forbears to add that this increase had enured to the benefit of the estate by the defeat of his propositions to sell), and, to be frank with you, I would rather remain trustee until the closing up of the estate, when I will become entitled to commissions as compensation for my services. As a business man you will readily grasp this proposition." In the light of what followed later we think it may, in the suggestive language of the trustee, be grasped.

We note especially the fact that his solicitude for the rescue of the estate from the dilapidation of a house of little value was coupled with another solicitude of a somewhat antagonistic aspect, and that he had indicated in his letter to one of the devisees of the small rents a readiness to abandon the devisees to their own folly if they would pay him out of their poor rents the highest commissions to which he

could be entitled by having rendered the most beneficial service.

The next step appears in a report filed by the trustee in the special term in equity on the 7th of March, 1888, in which he stated that on the 31st of January of the same year he had, through the agency of J. H. Gray & Co., sold the estate to one A. M. Kennedy for eleven thousand dollars cash, to be paid on ratification of the sale. In this report he asked for ratification of the sale, while expressing the belief that he had ample power under the will independently of the court. The sale was confirmed on the same day without notice to the devisees of the rents or to other parties interested in the estate. At the same term of the equity court Mrs. Susan B. Edwards and Alice Tyler filed their petition praying that the order confirming the sale be set aside as improvidently made; that Green be removed from his trust, and that some responsible person be substituted. On this petition Green, the trustee, and Kennedy, the purchaser, were ruled to show cause why the order of ratification should not be set aside. At a later day of the same term Green was ordered to pay into the registry of the court all the funds in his hand as trustee. The cause was heard upon the petition and the answer of Green, and on May 2, 1888, the prayer of the petitioners was denied. It is from this order that the appeal is now taken.

Green, in showing cause, states that the surviving testamentary trustee, having power to appoint a successor with all his own powers, had, in fact, exercised that power by the deed which he executed to the substituted trustee after the decree appointing him. He claims, therefore, to have been invested with power to sell, both by the decree of substitution and by Maupin's appointment. The effect of both of these is consequently to be considered.

We hold it to be clear, first, that the will itself did not give the power to sell and reinvest to any person besides the original trustees and the person whom the surviving trustee was to appoint. Whether that power was intended to vest even in the latter we need not decide. It is enough that the will made no provision for vesting such power in the person whom a court of equity might appoint, in the exercise of its ordinary jurisdiction, to prevent the failure of a trust by filling a vacancy. A testator might direct that the same discretionary power which he had given to trustees designated

by himself should belong to the trustee appointed by the court in case of a vacancy; but if he omits to do so a discretionary power will be construed to be personal. It follows that this power of sale and reinvestment did not vest in the substituted trustee as an incident to the trust in which he was substituted. If it belonged anywhere it belonged to the court and was to be exercised under its control. It remains to be considered whether the decree in this case intended to vest its power in the substituted trustee, and that he should sell and reinvest in the same manner as the original trustee. We think it is plain that it does not admit of any such construction. Whatever may be suggested by its language in divesting the title and powers of the surviving testamentary trustee and vesting them in Green, it is to be observed that the latter was distinctly made the court's trustee, and that he was, by an express provision of the decree, to be at all times "subject to the control and order of this court in matters touching the trust." It is impossible to state more plainly that he had no discretionary power. If he was at all times to be subject to the order of the court he must be subject to its order as to making any sale and reinvestment, and when any sale should be made it must be a sale by order of the court. It may be added that even if the will had contemplated that a substituted trustee might exercise the discretionary power to sell he could be required by the court, when once the cause came into its hands, to act under its control.

The remaining proposition, namely, that the deed executed by Maupin to the substituted trustees was an appointment under the will and gave the same power of sale which he had possessed, hardly needs consideration. Maupin was himself a party to the petition asking for a substitution. He was at once under the control of the court, and could do nothing to enlarge powers which the court chose to limit. Moreover, every power which he himself had possessed under the will, including this very power of appointment, had been divested by the decree when he attempted to act. If he could no longer appoint, Green could not receive any power from him.

The validity of this sale, then, depends wholly upon the propriety of the ratification by the court and its refusal to set aside that order; and as to this, it is to be remembered that parties interested in the estate are absolutely entitled to

a hearing before their interests are disposed of by the court. In this case the sale was made and confirmed without notice to them and without giving them a day. Whether the price received was a fair price and whether it was desirable, in view of the rise in values of property in that vicinity, that a sale should never be made at all, are questions of doubt; but whether the trustee has acted properly seems to be a question of no doubt at all. We are of opinion, in view of all the circumstances, that this sale should not be confirmed, that the order refusing to set it aside must be reversed, that Green should be required to pay into the registry what he has retained as commissions, and that he should be relieved from his trust.

NOTE.—After the announcement of the foregoing decision Alexander Kennedy, purchaser at the trustee's sale, filed a petition for rehearing. Upon this petition—

Mr. Justice MERRICK delivered the opinion of the court:

We have had under consideration the petition of Alexander Kennedy, who was a purchaser of the property in the case of Edwards *vs.* Maupin, in which the court announced an opinion on Monday last, deciding to set aside the proceedings of the court below ratifying the sale, and discharge the trustee for misconduct. This petition now seeks to have that decree or proposed decree modified so far as to save the petitioner's alleged rights as purchaser of the property in question, and he bases his petition upon the suggestion that inasmuch as the order appealed from was an application for a rehearing of an order passed at the same term it was purely a discretionary order and therefore unappealable.

There is a considerable misapprehension as to the extent of the right of appeal from the special to the general term, and this grows out of the fact that the decisions of the Supreme Court of the United States as to what is and what is not appealable from the circuit courts to the Supreme Court of the United States are relied upon as applicable to this court.

But the rule which applies to this court in regard to questions of appeal is entirely different from that applying to the Supreme Court and the circuit courts of the United States. When the question of the right of a party to an ap-

peal is raised here it is not sufficient that the appeal is from a discretionary order which would not be the subject of appeal from a circuit court to the Supreme Court of the United States. The word "discretion" means in the chancery court a very different thing from a discretion exercised by the court in regard to those interlocutory orders which are made in the progress of a cause, such as an order granting time, an order opening depositions and taking further depositions, an order setting down a cause for hearing or granting a continuance, and things of that kind—all these are in the proper sense discretionary; but there are other orders which, though they may be classed as discretionary, are not for that reason unappealable if substantial rights have been involved. The tendency of the courts of to-day is to give the right of review by appellate tribunals whenever the substantial rights of the parties are involved. It is apparent that in this case the most substantial rights of the parties were involved. Here is an application at the same term at which an order is passed ratifying a sale, which, being passed and not appealed from or corrected in any other mode, would definitively settle the rights of the parties and deprive the petitioners absolutely and forever of a title to real estate, by the conversion of the realty into a sum of money, whether the full or an inadequate price for the value of the land need not be considered.

In that state of case, according to chancery practice, there would be two things open for the party aggrieved: To apply to vacate that order upon a motion in the nature of a motion for a rehearing, based either upon error appearing upon the face of the proceedings, or upon some newly discovered matter for the first time brought to the attention of the court. He would also have the right to allow the term to pass and file a bill of review for the same reasons. The party in this case chose, and very properly chose, the simpler mode of applying to the court to vacate the order. The application was substantially based upon the ground of fraud, and for error apparent upon the face of the order, and also for newly discovered evidence which had not been previously brought to the attention of the court. The court refused to grant the motion and an appeal was taken. We entertained the appeal and announced on Monday last the conclusion to which we had arrived, and the extent of relief which we determined to grant.

The suggestion now is want of jurisdiction.

We have considered the petition very carefully, and the court has not been persuaded to change its opinion in any respect, and the petition, therefore, will be dismissed.

It may be added that there is no merit whatever in this application to the court at this late date and for the first time, because upon the face of the petition it appears that the petitioner was notified of the proceedings in special term and knew of the progress of the cause up to the time of the appeal; but he took the position that he would not be prejudiced; that his rights would not be involved in the proceedings. Every man, when he is notified of the facts, is charged with knowledge of the legal consequences of those facts; and if the petitioner erred in his judgment as to what conclusions this court might arrive at upon consideration and argument as to the rights of the parties in this case be he cannot say that he has been taken by surprise or been aggrieved, for he has had his day not only in the special term, but also might have had his day upon final argument in this court. He is, therefore, without any claim whatever to have the matter considered. This conclusion has been reached by us only after very careful deliberation.

The petition is accordingly dismissed.

BRIEF IN BEHALF OF APPELLEES.

The two appeals in the above-entitled cause are taken from the decree of the general term of the District of Columbia, removing James B. Green, trustee, respondent in the court below and appellant in this Court, from his office of trustee and setting aside the sale made by said James B. Green, trustee, to Alexander M. Kenaday, also appellant in this Court. (Rec., p. 60.)

The lot which the trustee Green undertook to sell had been devised by Mary E. Macpherson unto her two nephews, Chapman Maupin and Robert W. Maupin, to be held by them and the survivors of them and by such person or persons as might be appointed by the last will and testament of such survivor, or other instrument of writing executed by such survivor, in trust to take the rents, profits, and income thence arising, and to pay the one-half of the net amount received to Susan W. Edwards, the daughter of testatrix, for and during her natural life, and upon her death to the daughter of said Susan W. Edwards and granddaughter of testatrix, and upon the death of said granddaughter to pay the said rents to the great-granddaughter of testatrix, Alice Tyler ("subject to the terms and conditions annexed to the provision hereinafter made for the said Alice"). (Rec., pp. 4 and 5.)

The remaining moiety of said rents was directed to be paid to the sole and separate use of the said Alice Tyler, with power to appoint said moiety. The will provided for the ultimate disposition of each moiety according to certain contingencies. It then provided as follows:

"And I do hereby confer upon my *said trustees* full power and authority, at his or their discretion, from time to time to sell by public or private sale and to convey to the purchaser or purchasers all or any part of the trust property in this will devised and bequeathed to my *said trustees*, and to re-

ceive, grant acquittance for, and reinvest the proceeds of such sales, and I do expressly relieve purchasers of such property from the obligation to see to the application of the purchase-money." (Rec., p. 6.)

Robert W. Maupin died in 1876. On November 2, 1881, a petition of Susan W. Edwards and Alice Tyler, the present appellees, stated this fact, the failure by the trustees to account to the court, and further showing "that one of them, the said Alice Tyler, is an infant of tender years, who claims the protection of your honor as to the manner in which the said trustees or the survivor of them may discharge his or their duty," asked for the appointment of a new trustee, and that "an accounting for the said rents and profits be had from the said Chapman Maupin, surviving trustee." (Rec., p. 2.) Answer of Maupin, *Id.*, 9.

On the 29th of March the court decreed that the said trust estate "*be, and the same is hereby, taken out of the said Chapman Maupin, the survivor of the said co-trustees, and vested in James B. Green*, together with all the rights, powers, duties, and obligations incident thereto under the said last will and testament." * * * That all the trusts vested by the said will in the said co-trustees and surviving to the said Chapman Maupin be, and they are hereby, abrogated and repealed as to him and conferred upon the said James B. Green, subject to the terms of the said last will and testament, * * * and that he (*i. e.*, the said James B. Green) *shall at all times be subject to the control and order of this court in matters touching the trust.*" (*Id.*, 19.)

About eighteen months after this decree a correspondence began between the substituted trustee and the beneficiaries under the trust, in which the trustee urged the sale of the lot on F street northwest, held by him in trust as aforesaid, while the beneficiaries, the present appellees, distinctly objected thereto. In November, 1883, he submitted to them an offer of $5,500 (*Id.*, 21); in April, 1884, he expressed surprise and annoyance that they should disapprove of a

sale at $6,500 (*Id.*); in October, 1886, he wrote several letters from Los Angelos, California, whither he had removed his residence, urging the acceptance of $8,500, and seeks to overcome the objections of his *cestuis que trustent* to parting with it at that price (*Id.*, 23). Mrs. Edwards indicates her opinion that the property is worth $12,000 (*Id.*, 24). The trustee has already said to her: "The increase of your income and making it more certain have been my only objects, and *you are the best judge whether they are desirable or not*" (*Id.*); that if his *cestuis que trustent* desire to substitute another for himself *he will put no obstacle in the way toward it* (*Id.*, 19); and, in view of the fact that he had actually made a sale of the property for $8,500, "subject to ratification by the court," before making the effort "to overcome your objections" (*Id.*, 23), he says, "my only object in desiring to sell is to make your income larger and more certain," * * * "and I will refrain from reporting sale to the court in deference to your wishes. As I said before, my powers are ample, but I do not care to exercise them at the expense of unpleasant relations with you" (*Id.*, 24). Subsequently he seems to have reconsidered his offer to resign, and, writing to W. H. H. Raleigh, says: "The property in my hands has been kept up and has increased handsomely in value, and, to be frank with you, I would rather remain trustee until the closing up of the estate, when I will become entitled to commissions as a compensation for my services. *As a business man you will readily grasp this proposition*" (*Id.*, 25). When, therefore, Mrs. Edwards, in response to his arguments and suggestions, intimated a wish that he should relieve himself of the anxieties of the trust, he tells her "frankly and calmly" the terms upon which he will retire.

"If the property be worth what you and your friends value it at ($12,000) my commissions, at 5 per cent., on its sale, will be six hundred dollars; but estimating on the sale I recently made at $8,500, as the true basis, $425 will be my compensation." To this sum he adds $100 on account of

rent collected, and concludes: "*If you send me a draft on New York for* $525, *I will petition the court to let me resign, release my securities, and appoint Mr. W. H. H. Raleigh my successor.*" (*Id.*, 26).

It is plain that the trustee proceeded on the assumption that he had a vested right to whatever commissions might be derived from a sale of property belonging to his *cestuis que trustent*, and that the latter had no right to oppose a sale susceptible of so much profit to himself; that "*as a business man*" he, of course, held the trust not for the benefit of the beneficiary, but for the benefit of the trustee.

The financial proposition not having been "grasped" by the beneficiaries as readily as it was by the "business man" at the other end of the line, the next which they hear from him is the following, from Richmond, Va., addressed to W. H. H. Raleigh, March 3, 1888:

"I think it my duty to inform you that I have accepted an offer of $11,000 for the F-street property in Washington, and you will please acquaint the ladies with the facts. * * * I say frankly to you that I invite the most minute criticism of my motives and administration, and am not to be deterred from my purpose by threats or litigation. * * * I address this to you because you took part in prevailing on me to cancel the previous sale, and because, *as a business man*, you will take *a calmer and more reasonable view of my position than the ladies.*"

P. S.—March 7, 1888. Postmark, Washington, D. C.

"I withheld this to let you know results. Sale confirmed to-day and money paid. Will see you to-morrow or next day.

"J. B. G." (*Id.*, 27.)

Upon reference to the court records it was then ascertained that on the 7th of March, 1888, the said Green had filed a report in the special term, in which he states that *on the 31st of January* of the same year—*i. e.*, five weeks earlier—he had, through the agency of J. H. Gray & Co, sold the estate to

one A. M. Kenaday for $11,000 cash, to be paid on ratification of the sale, and, expressing the belief that said sale was "highly advantageous to all parties concerned in the trust," prays the ratification thereof (*Id.*, 20). The sale was confirmed on the same day without any notice to the parties beneficially entitled thereto. (*Id.*, 21.)

At the same term of court the beneficiaries under the trust filed a petition, praying that the order confirming the sale be set aside as improvidently made, that Green be removed from his trust and some responsible person substituted. (*Id.*, 28.)

On the petition Green, the trustee, and Kenaday, the purchaser, were ordered to show cause why the order of ratification should not be set aside.

The present appeals by Green and Kenaday are taken from the decree of the general term removing Green from his office and setting aside the sale to Kenaday. (*Id.*, 60.)

The affidavits filed by the appellees show that in the opinion of competent judges the property was sold by the trustee at a sacrifice (Rec., pp. 44, 45, 46); also, that the sale was made by the same reale-state agents who had attempted to make a former sale, prevented by appellees, and who knew that the appellees did not want the said property sold then or at any future time. (*Id.*, 47 and 48.)

It is further shown that notwithstanding the decree of the special term of March 23, 1888 (*Id.*, 55), directing the trustee, Green, to pay into the registry of the court all money, bonds, and securities in his hands as trustee for the appellees, and notwithstanding the further order directing the interest upon bond No. 67, of the city of Richmond, Va., to be paid to the appellees or to their duly authorized attorney, *and not to said James B. Green, trustee, and notwithstanding a copy of said last-mentioned decree was duly lodged with the auditor of the city of*

Richmond, and that Wyndham Meredith, Esq., was duly constituted the attorney of the appellees; yet, that the said Green, in defiance not only of the rights of the appellees, but of the express orders of the court, had appropriated the whole of said interest to himself, and not accounted for one cent thereof, but paid the same over to a broker, of the city of Richmond. (*Id.*, 50.)

This conduct of the trustee having been reported to the special term, the said trustee was ordered to pay into the registry of the court the whole of said interest (*Id.*, 56). This order never having been complied with, the facts concerning the appropriation of said interest, supported by the affidavits of Wyndham R. Meredith, the attorney of appellees (*Id.*, 54), and W. R. Quarles, the broker to whom said Green had turned over in payment of his own debts the money belonging to his *cestuis que trustent* (*Id.*, 55), were made the basis of an additional application to the general term for the removal of said trustee. (*Id.*, 51 *et seq.*)

It is also shown that notwithstanding the order of court of March 23, 1888, to said trustee to pay into the registry of the court all the funds now in his hands as trustee in this cause, of any and all description, on or before the 28th day of March, A. D. 1888 (*Id.*, 39), the said Green has only paid into court the sum of $9,921.92; so that of the sum of $11,000.00, the price of the real estate sold by said trustee, $1,078.08, remains unaccounted for and unpaid into the registry of the court, as required by said order of March 23, 1888 (*Id.*, 52). The trustee is, therefore, in continuing contempt of court and his own obligations, both in respect to the principal and the interest of the funds confided to his care and custody for the benefit of others.

Green, in showing cause, states (Record, p. 40) that the surviving testamentary trustee, Chapman Maupin, did, on the 27th of February, 1888 (*i. e.*, one month after the secret sale to Kenaday and one week before the same was ratified by the court), make a deed to himself, clothing him, the said Green, with all the power originally possessed by the said

Maupin under the will, and that by virtue of the decree of substitution, and also by reason of this deed from Maupin to Green, the latter was empowered to sell irrespective of the wishes of the *cestuis que trustent* or of the approval of the court. (See deed, p. 42.)

The specific duties of the testamentary trustees were to take care of a life estate in land; to husband the rents and profits arising from this source and pay them to the life tenants in such regular installments as in their discretion might be best for their beneficiaries (Record, pp. 4, 5, 6), and with no other discretion whatever in connection with the duties specifically mentioned.

This trust is bestowed on the testamentary trustees "to be held by *them* and the survivor of *them*, and by such person or persons as may be appointed to execute the trusts declared by this my will, by the last will and testament of such survivor, or by other instrument of writing executed for that purpose by such survivor" (*Id.*, p. 4). The final paragraph relating to the testamentary trustees concludes as follows: "And I do hereby confer upon my *said trustees* full power and authority, at *his* or *their* discretion, from time to time to sell by public or private sale and to convey to the purchaser or purchasers all or any part of the trust property *in this will devised and bequeathed to my said trustees.*" (*Id.*, 6.)

POINTS AND AUTHORITIES.

In equity the *cestui que trust.* is the absolute owner of the trust estate.

The authority of the trustee is limited to the duty specifically prescribed to him.

It admits of question whether the right of property bestowed by the testatrix on the testamentary trustees and the right which they had the power to sell at public or private sale was more than an estate commensurate with that of the beneficiaries for whom they held, to wit, a life estate. A de-

vise to trustees may, of course, be restricted or extended as the nature and purposes of the trust require. If a devise be expressly to the trustees and their heirs, yet if the duties imposed on them or the purposes of the trust require only an estate, *pur autre fie*, to be vested in them, their legal interest will be cut down to that extent (Ellis *vs.* Fisher, 3 Snead, 230.) It is by no means clear that the duties imposed on the trustees or the purposes of the trust require any greater estate in the present case.

But the power and discretion contained in this paragraph is bestowed by the testatrix on her *said trustees—i. e.*, it is given to both of said trustees, and exclusively to both, and not to either nor to the survivor, nor to anybody designated by the survivor.

Assuming, however, for the purpose of this argument, that the surviving trustee might derive by implication the powers expressly limited to both, the question immediately arises whether, under any circumstances, it would be in his power to transfer that part of the trust which imported and expressed the especial confidence of the testatrix in her two nephews.

Powers that imply a personal confidence in the donees can only be exercised by the persons to whom they are expressly given.

Hill, 226.

Where a power given to the original trustee is of a kind that indicates personal confidence, it will *prima facie* be confined to the individual to whom it is given, and will not without express words pass to others, to whom by legal transmission the character of the trustee may happen to belong, and though the estate, with the trust attached to it, will be in the trustee appointed by the court yet the power (being one of that description) will be extinct. (*Id.*, 211 and 331; Cole *vs.* Wade, 16 Ves., 45.)

A power of sale in a settlement was given to A and B, the

trustees to preserve contingent remainders and the survivor of them, and the executors and administrators of the survivor: held, that trustees appointed by the court in place of A and B could not exercise the power.

Newman *vs.* Warner, 1 Sim. N. S., 456.

It is, however, respectfully submitted to be incontrovertible that the power and discretion so doubtfully existing in the surviving trustee, and so doubtfully susceptible of transfer by him, could not possibly remain in him for any purpose, whether of exercise or delegation, after he had voluntarily surrendered and parted with the whole of it. On the 29th day of March, 1882, the equity court decreed that the estate devised to Chapman Maupin and Robert W. Maupin, upon certain trusts declared in said will, be, and the same is hereby, taken out of the said Chapman Maupin, the survivor of the said co-trustees, and vested in James B. Green, of the city of Baltimore, together with all the rights, powers, duties, and obligations incident thereto under the said last will and testament. And it is further adjudged, ordered, and decreed that all the trusts vested by the said will in the said co-trustees and surviving to the said Chapman Maupin *be, and they are hereby, abrogated and repealed as to him* and conferred upon the said James B. Green, subject to the terms of the said last will and testament." (*Id.*, 19.)

Clearly, on February, 27th, 1888, Maupin had no right in respect to this estate which he could convey to anybody. Every power he ever had, including the power of appointment, had been utterly divested, abrogated, and repealed as to him.

The will makes no provision for vesting the discretionary power which the testatrix gave to the trustees designated by herself in any person whom a court of equity might appoint. Such power, therefore, would not vest in the substituted trustee as an incident to the trust in which he was substituted. If this power belonged anywhere it belonged

to the court and was to be exercised under its control. Indeed, were this the case, not of the substituted trustee, but of the trustees originally selected by the testatrix, the doctrine would apply that when once a suit has been instituted for the execution of a trust, that attracts the jurisdiction of the court, and the trustee, even the testamentary trustee, from that time, and even where he originally had discretion is not justified in proceeding to a sale of the property without the sanction of the court.

If a change in the character of the fund be deemed necessary or for the interest of the beneficiary, it should be made only with the permission and by the sanction of a court of equity.

"The temptations to a trustee to tamper with a trust fund are so numerous and so powerful, the hopes of bettering the estate so often prove delusive, that the power of changing the character of the fund is most safely reposed in the discretion of judicial tribunals." (Quick *vs.* Fisher, 9 N. J. Eq., 805.)

But in the present case the wise policy of the law is reinforced by the express language of the decree making Green the court's trustee, and expressly directing "*that he shall at all times be subject to the control and order of this court in matters touching the trust.*" (*Id.*, 19.)

To adopt the language of the court below, "it is impossible to state more plainly that he had no discretionary power." If the will had contemplated that a substituted trustee might exercise the discretionary power to sell, he could still be required by the court, when once the cause came into its hands, to act under its control.

The validity of this sale, which the trustee sought to make and did make without the knowledge of his *cestuis que trustent* and, as he well knew, against their wishes and in disdain and defiance of them, depends wholly upon the ratification by the court, whereat the parties interested in the estate

were entitled to a hearing, which the substituted trustee so sedulously avoided and prevented. The sale was made and confirmed without notice to them and without giving them a day in court. It was made by a trustee who at the very time was negotiating with his *cestuis que trustent* for the surrender of his trust, who kept his *cestuis que trustent* in the dark as to his intentions in order to prevent the defeat of those intentions, who deceived them and betrayed them, equally evading and avoiding their rights and his own obligations. He tells the court "he believes the sale to be highly advantageous to all the parties concerned in the trust," although at the time he knows it to be over the protest and remonstrance and in equal violation of the wishes and the rights of one recognized by himself to be "the best judge" of the parties concerned in the trust. He writes: "Your insisting on my retiring without cause makes me demand full compensation" (Record, page 26), the "full compensation" which he claimed being not only for services rendered, but for those which he claimed he had a right to render for the purpose of making it "full." As, according to his own conception of the matter, his *cestuis que trustent* were insisting on his retiring "*without cause*," he proceeds to give them the amplest opportunity to do so *with cause*. "What do you mean," he indignantly inquires, "by abiding by the decision of the court?"

One is tempted to inquire in return, is it an indignity, then, for a fiduciary expressly decreed to be "subject to the order and control of the court in matters touching the trust" to be invited to abide by the decision which the law of his being obliges him to invoke? Nor does it call for argument that the controlling order must be one not surreptitiously, but candidly and honestly, obtained. The invitation to submit to the court the difference between trustee and beneficiary is gratified by the suppression of that difference and the careful concealment of the submission from the beneficiary, who would have revealed the differ-

ence, and who did reveal it the instant she had the opportunity to do so.

"As the estate of the *cestui que trust.* depends for its continuance upon the faith and integrity of the trustee, it is reasonable that the *cestui que trust.*, whose interest is thus materially concerned, should be allowed by all practical means to secure himself against the occurrence of any act of misconduct."

Lewin, p. 846.

In this case the *cestui que trust.* would have been entitled to an injunction to restrain the trustee from such a wanton exercise of his power, even had the same legally existed.

Id., 855.

This was the case of a trustee attempting to deal with the trust property for his own personal advancement, avowedly so attempting and intending; indignant with his *cestui que trust.* for imagining that her interest touched the matter, and that the court might be usefully inquired of concerning it.

Where the acts or omissions of a trustee are such as to show a want of reasonable fidelity a court of equity will remove him.

Cavender *vs.* Cavender, 114 U. S., 472.

The present is most distinctly such a case.

Commissions are allowed to trustees as a compensation for services in the execution of the trust, and in case of gross neglect or of unfaithfulness the court may properly disallow them.

Cook *vs.* Lowrie, 95 N. Y., 104.

If full commissions cannot be allowed on the voluntary rendering of an account for the purpose of securing full commissions (Cram *vs.* Cram, 2 Redf., 244), how much less should a court of equity suffer a trustee to forcibly seize

commissions awarded by himself upon the sale of property, made in violation of the wishes and instructions and in outrage of the rights of the beneficial owners?

After the opinion of the general term had been announced deciding to set aside the proceedings of the court below ratifying the sale and discharging the trustee for misconduct, the appellant, Kenaday, petitioned the court to modify the proposed decree, so far as to save his alleged rights as purchaser of the property in question, upon the ground that the order appealed from was a discretionary order and therefore unappealable, being, as it is claimed, an order upon an application, which is in effect a motion for a rehearing.

Upon the petition of the present appellees (Rec., p. 37) the special term, on March 17, 1888, "adjudged, ordered, and decreed that James B. Green, the trustee, etc., and A. M. Kenaday, the purchaser named in the report of said James B. Green, trustee, filed herein on March 7, 1888, show cause within five days from the date of this order why the order of this court passed on the 7th day of March, 1888, ratifying and confirming the sale should not be vacated and set aside as having been improvidently passed, *the sale so ratified vacated and set aside*, and why the said James B. Green should not be removed from his office of trustee."

Green and Kenaday were duly served.

On March 29, 1888, Green attempted to show cause, as we have seen (*Id.*, 40). Kenaday never troubled himself to do so in the special term, or in the general term until after the opinion of the latter.

Had this been an application for rehearing by a party who had been already heard, doubtless it would have been addressed to the discretion of the court, and doubtless the exercise of such discretion would not be reviewed, but only the original decree; but the present was an application not to be reheard, but a petition by parties, who never had been heard, to vacate and set aside a decree because of fraud and deceit in the procurement of that decree, and the question

submitted, and for the first time submitted, to the special term was, whether the fraud and deceit shown by the petitioners was sufficient for that purpose and for the additional purpose of removing the trustee. The special term decided it to be insufficient and so decreed—*i. e.*, the whole case made by the petitioners was finally and forever decided against the petitioners, unless on appeal it might be reversed. If the question whether a decree procured by fraud may be vacated for that reason is one so entirely in the discretion of the court that no error in the decision thereof can afterwards be reviewed, it is fortunate for fraud and unfortunate for equity.

The decree of the general term was in all respects proper.

When trustees depart from that rule of conduct which their duty prescribes to them, neither they nor those who claim under them, *with notice of the trust* and of its breach, can sustain an interest derived from their breach of trust.

Adair *vs.* Shaw, 1 Schoales & Lefroy, 262.

Hovenden on Frauds, p. 484.

A purchaser by a deed from a grantor who is a trustee and so styles himself has notice of the trust.

Pomeroy Eq., §§ 630, 659, 770.

When the *cestui que trust.* is of age or *sui juris* the trustee has no right (*unless express power is given*) to change the nature of the estate, as by converting land into money or money into land, so as to bind the *cestui que trust.*

2 Story Eq., § 978.

It is competent for the trustee to sell trust property *by and with the consent and approbation of the cestui que trust.*, provided there be no restriction upon his powers in the deed *and no limitation over to children or third persons.*

Arrington *vs.* Cherry, 10 Ga., 429.

But here there were limitations over to children and third persons, and no consent, but positive dissent, of the *cestui que trust*. Further, it may be questioned "whether the power of the court extends to a case like the present, where the trust is for a class of persons some of whom may, but have not yet, come into existence."

Troy *vs.* Troy, 1 Busbee Eq., 85.
Clarke *vs.* Hayes, 9 Gray, 428.
In the Matter of Margaret Jones, 2 Barb. Ch., 22.

Section 969, R. S. D. C., provides that "where real estate is limited by deed or will to one or more for life or lives, with a contingent limitation over to such issue of one or more of the tenants for life as shall be living at the death of their parent or parents, and the deed or will does not prohibit a sale, the supreme court of the District may, *upon the application of the tenants for life*, and *if the court shall be of the opinion that it is expedient to do so*, order a sale of such estate."

And where the estate of an infant is to be sold the infant, together with those who would be heirs to the estate if he were dead, shall be made parties defendant, and a guardian *ad litem* appointed for the infant, who shall answer the bill on oath (*Id.*, § 959), and it must appear to the satisfaction of the court by evidence taken in the cause that the interest of the infant requires the sale. (*Id.*, §§ 960 and 961.)

Neither the letter nor the spirit of these laws was regarded in the attempt to transfer the property in controversy to the appellant, Kenaday.

The original bill, signed by Green as solicitor, under which the trustee was appointed, shows that one of the *cestuis que trustent* is an infant of tender years, who claims the protection of the court (Record, p. 2), and the trustee himself says of both of them: "*The petitioner, Susan W. Edwards, is under the infirmities of advanced age and both she and Alice Tyler are timid and without much business knowledge*" (*Id.*, 36). How far the court's trustee sought to take advantage of those infirm-

ities and to abuse that want of business knowledge is now before the court.

As has been shown, the purchaser, who is here seeking to coerce the appellees to submit to a sale made in such flagrant defiance of their rights and wishes, conducted the negotiation through real-estate agents who, on a prior occasion, had been informed by the appellees in person that they did not wish a sale of the said property then or at any future time. (*Id.*, 47 and 48.)

It is therefore respectfully submitted that the decree of the court below should be affirmed, both in respect to the removal of the trustee and the vacation of the sale so fraudulently made by him.

LEIGH ROBINSON,
HENRY WISE GARNETT,
Solicitors for Appellees.